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European Union

Brussels, 18 January 2023  
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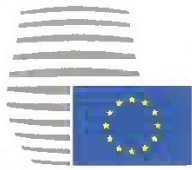
### **OUTCOME OF PROCEEDINGS**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5217/23
No. Cion doc.:	13944/20 + ADD 1 - COM(2020) 798 final + Annex
Subject:	Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 - Letter to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI)

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Following the Permanent Representatives Committee meeting of 18 January 2023 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI).



Council of  
the European Union

SGS 23 / 00162

Brussels, 18 January 2023

**Mr Pascal CANFIN**

Chair, European Parliament Committee for Environment, Public Health and Food Safety  
European Parliament  
Bât. WILLY BRANDT 04M099  
60, rue Wiertz / Wiertzstraat 60  
B-1047 Bruxelles/Brussel

**Subject:** *Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (2020/0353 (COD))*

Dear Mr CANFIN,

Following the informal meeting between the representatives of the three institutions held on 9 December 2022, a draft overall compromise text was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close and swift cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

*Torbjörn Haak*

Chairman of the Permanent Representatives  
Committee (Part 1)

copy to: **Virginijus Sinkevičius**, Commissioner  
**Achille Variati**, Rapporteur

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending  
Regulation (EU) No 2019/1020**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof *and Article 192(1) thereof in relation to Articles 45g to 62 of this Regulation*,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p.

- (1) The European Green Deal<sup>3</sup> is Europe's growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. A shift from the use of fossil fuels in vehicles to electromobility is one of the prerequisites for reaching the climate neutrality goal in 2050. In order for the Union's product policies to contribute to lowering carbon emissions on a global level, it needs to be ensured that products marketed and sold in the Union are sourced and manufactured in a sustainable manner.
- (2) Batteries are thus an important source of energy and one of the key enablers for sustainable development, green mobility, clean energy and climate neutrality. It is expected that the demand for batteries will grow rapidly in the coming years, notably for electric road transport vehicles *and light means of transport* using batteries for traction, making this market an increasingly strategic one at the global level. Significant scientific and technical progress in the field of battery technology will continue. In view of the strategic importance of batteries, and to provide legal certainty to all operators involved and to avoid discrimination, barriers to trade and distortions on the market for batteries, it is necessary to set out rules on sustainability parameters, performance, safety, collection, recycling and second life of batteries as well as on information about batteries *for end-users and economic operators*. It is necessary to create a harmonised regulatory framework for dealing with the entire life cycle of batteries that are placed on the market in the Union .

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<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal (COM (2019) 640 final).

- (2a) *It is also necessary to update Union legislation on the management of battery waste and to take measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste, by reducing the impact of resource use and by improving resource efficiency. Such measures are crucial for the transition to a circular and climate-neutral economy and toxic-free environment, and for the Union's long-term competitiveness and strategic autonomy. They can create important economic opportunities, increasing synergies between the circular economy and energy, climate, transport, industry and research policies, and protecting the environment and reducing greenhouse gas emissions.*
- (3) Directive 2006/66/EC of the European Parliament and of the Council<sup>4</sup> has brought about an improvement in the environmental performance of batteries and established some common rules and obligations for economic operators, in particular through harmonised rules for the heavy metal content and labelling of batteries and rules and targets for the management of all waste batteries, based on extended producer responsibility.

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<sup>4</sup> Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1)

- (4) The Commission's reports on the implementation, impact and evaluation of Directive 2006/66/EC<sup>5</sup> highlighted not only the achievements but also the limitations of that Directive, in particular against a fundamentally changed context characterised by the strategic importance of batteries and their increased use.
- (5) The Commission's Strategic Action Plan on Batteries<sup>6</sup> sets out measures to support efforts to build a battery value chain in Europe, embracing raw materials extraction, sustainable sourcing and processing, sustainable battery materials, cell manufacturing as well as re-use and recycling of batteries
- (6) In the European Green Deal, the Commission confirmed its commitment to implement the Strategic Action Plan on Batteries and stated that it would propose legislation to ensure a safe, circular and sustainable battery value chain for all batteries, including to supply the growing market of electric vehicles.

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<sup>5</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 9 April 2019 on the implementation and the impact on the environment and the functioning of the internal market of Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (COM(2019) 166 final) and Commission Staff Working Document on the evaluation of the Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (SWD(2019) 1300 final).

<sup>6</sup> Annex 2 to Communication from the Commissions to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 May 2018, EUROPE ON THE MOVE - Sustainable Mobility for Europe: safe, connected and clean (COM(2018)293 final).

- (7) The Council in its conclusions of 4 October 2019 on ‘More circularity – Transition to a sustainable society’ called, inter alia, for coherent policies supporting the development of technologies that improve the sustainability and circularity of batteries to accompany the transition to electro-mobility. Furthermore, the Council called for an urgent revision of Directive 2006/66/EC, which should include all relevant batteries and materials and which should consider, in particular, specific requirements for lithium and cobalt as well as a mechanism allowing the adaptation of that Directive to future changes in battery technologies.
- (8) The new Circular Economy Action Plan adopted on 11 March 2020<sup>7</sup> states that the proposal for a new regulatory framework for batteries will consider rules on recycled content and measures to improve the collection and recycling rates of all batteries, in order to ensure the recovery of valuable materials and to provide guidance to consumers and will address the possible phasing out of non-rechargeable batteries where alternatives exist. Furthermore, it is stated that sustainability and transparency requirements will be considered, taking into account the carbon footprint of battery manufacturing, the ethical sourcing of raw materials and the security of supply in order to facilitate reuse, repurposing and recycling of batteries.

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<sup>7</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 March 2020, A new Circular Economy Action Plan – For a cleaner and more competitive Europe (COM(2020)98 final).

- (9) Addressing the entire life cycle of all batteries placed on the Union market requires the setting up of harmonised product and marketing requirements, including conformity assessment procedures, as well as requirements to fully address the end-of-life stage of batteries. Requirements concerning the end-of-life stage are necessary to address the environmental implications of the batteries and, in particular, to support the creation of recycling markets for batteries and markets for secondary raw materials from batteries █. In order to reach the envisaged objectives to address the whole life cycle of a battery in one legal instrument while avoiding barriers to trade and a distortion of competition and safeguarding the integrity of the internal market, the rules setting out the requirements for batteries should be of uniform application for all operators across the Union, and not give room for divergent implementation by Member States. Directive 2006/66/EC should therefore be replaced by a Regulation.
- (10) This Regulation should apply to all *categories* of batteries █ placed on the market or put into service within the Union, ***regardless of whether they were produced in the Union or imported***, whether on their own or incorporated into appliances or otherwise supplied with electrical and electronic appliances, ***light means of transport*** and vehicles. This Regulation should apply regardless of whether a battery is specifically designed for a product or is of general use and regardless of whether it is incorporated into a product or is supplied together with or separately from a product in which it is to be used.



*Placing on the market is considered to take place when the batteries have been made available for the first time on the Union market, supplied by the manufacturer or importer for distribution, consumption or use in the course of a commercial activity, whether in return for payment or free of charge. Thus, batteries placed in stock in the EU by distributors, including retailers, wholesalers and sales divisions of manufacturers, before the date of application of relevant requirements do not need to meet those requirements.*

*(10a) The Regulation should prevent and reduce adverse impacts of batteries on the environment and ensure a safe and sustainable battery value chain for all batteries, taking into account, for instance, the carbon footprint of battery manufacturing, ethical sourcing of raw materials and security of supply, and facilitating reuse, repurposing and recycling. It should seek to improve the environmental performance of batteries and of the activities of all economic operators involved in the life cycle of batteries, e.g. producers, distributors and end-users and, in particular, those operators directly involved in the treatment and recycling of waste batteries. Such measures should ensure transition to a circular economy and the long-term competitiveness of the Union and should contribute to the efficient functioning of the internal market, while taking into account a high level of protection of the environment. This Regulation should also minimise the negative effects of the generation and management of batteries waste on human health and the environment and it should aim at reducing the use of resources, and favour the practical application of the waste hierarchy.*

*Thus, to prevent divergences hampering the free circulation of batteries, uniform obligations and requirements are to be laid down throughout the internal market based on Article 114 TFEU. To the extent that this Regulation contains specific rules on the management of waste batteries, it is appropriate to base this Regulation, in as far as those specific rules are concerned, on Article 192(1) TFEU.*

- (11) Products placed on the market as battery packs, which are batteries or groups of cells that are connected and/or encapsulated within an outer casing so as to form a complete unit ready for use *by end-users or in applications* that the end-user is not intended to split up or open and which conform to the definition of batteries, *or* battery *cells that* conform to the definition of *batteries*, should be subject to requirements applicable to *batteries*.
- (11a) *Batteries that can be made ready for use by the end user with commonly available tools on the basis of a "Do It Yourself" kit, should be considered as batteries for the purpose of this Regulation. The economic operator placing such kit on the market should be responsible for the purposes of this Regulation.*

- (12) Within the Regulation's wide scope, it is appropriate to distinguish between different categories of batteries in accordance with their design and use, independent of the battery chemistry. The classification into portable batteries, on one hand, and industrial batteries and *SLI* batteries on the other hand under Directive 2006/66/EC should be further developed to better reflect new developments in the use of batteries. Batteries that are used for traction in electric vehicles and which under Directive 2006/66/EC fall in the category of industrial batteries, constitute a large and growing part of the market due to the quick growth of electric road transport vehicles. It is therefore appropriate to classify those batteries that are used for traction in road vehicles as a new category of electric vehicle batteries. ***Batteries used for traction in light means of transport, such as e-bikes and e-scooters, were not clearly classified as batteries under Directive 2006/66/EC, and constitute a significant part of the market due to their growing use in urban sustainable mobility. It is therefore appropriate to classify those batteries that are used for traction in light means of transport as a new category of batteries, namely light means of transport (LMT) batteries. Batteries used for traction in other transport vehicles including rail, waterborne and aviation transport or off-road machinery, continue to fall under the category of industrial batteries under this Regulation. The industrial battery category encompasses a broad group of batteries, intended to be used for industrial activities, communication infrastructure, agricultural activities, or generation and distribution of electric energy. Batteries which are given industrial uses after being subject to preparing for repurpose or repurposing, even though they were initially designed for a different use, are to be considered as industrial batteries under this Regulation. In addition to this non exhaustive list of examples, any battery with a weight above 5 kg that does not fall under any other categories under this Regulation should be considered as an industrial battery. Batteries used for energy storage in private or domestic environments, are considered as industrial batteries for the purposes of this Regulation. Batteries providing traction to wheeled vehicles considered as toys within the meaning of the Toy Safety Directive 2009/48/EC, should not be considered as LMT Batteries, but for the purpose of this Regulation, they should be considered as portable batteries.***

***(12a) After being placed on the Union market or put into service for the first time, a battery can be subject to re-use, repurposing, remanufacturing, preparing for re-use, or preparing for repurpose. For the purpose of this Regulation, consistently with the Union framework on products regulation, a used battery, meaning a battery that has been subject to re-use, is considered to have already been placed on the market when it was first made available for use or distribution. On the contrary, batteries subject to preparing for re-use, preparing for repurpose, repurposing, or remanufacturing, are considered to be placed on the market again and therefore should comply with the specific requirements and obligations for which this Regulation provides.***

***In addition, also consistently with the Union framework on products regulation, a used battery when imported from a third country is then considered to be placed on the market when it enters the Union for the first time. Therefore a battery subject to re-use, repurposing, remanufacturing, preparing for re-use, or preparing for repurpose imported from a third country should comply with the specific requirements and obligations for which this Regulation provides.***

***(12b) Remanufacturing covers a wide range of technical operations that may occur on batteries or on waste batteries. When occurring on waste batteries, remanufacturing can be assimilated to preparing for reuse or preparing for repurpose. For this reason, it is not necessary to provide in Chapter VII a specific regime for the remanufacturing of waste batteries different from the regime on preparing for reuse or preparing for repurpose of waste batteries.***

*When occurring on used batteries, remanufacturing has the objective to restore the original performance of a battery. In that sense remanufacturing can be seen as an extreme case of reuse entailing the disassembly and evaluation of the cells and modules of the battery and the replacement of a certain amount of these cells and modules. In order to differentiate remanufacturing from mere reuse, the restoration of the battery capacity to at least 90% of the original rated battery capacity should be considered as remanufacturing and provide for the application of a specific regime.*

- (12c) *A battery subject to preparing for re-use, preparing for repurpose, repurposing or remanufacturing should be covered by a sales contract that complies with the requirements of Directive (EU) 2019/771, when the end-user is a consumer. In particular, these requirements cover conformity of the product, liability of the seller (including the option of a shorter liability or limitation period), burden of proof, remedies for lack of conformity, repair or replacement of the goods, and commercial guarantees, among other requirements.*
- (13) Batteries should be designed and manufactured so as to optimise their performance, durability and safety and to minimise their environmental footprint. It is appropriate to lay down specific sustainability requirements for rechargeable industrial batteries with a capacity above 2 kWh, **LMT batteries and electric vehicle batteries** as such batteries represent the market segment which is expected to increase most in the coming years.

**(13a) For the safety of electric vehicle batteries and SLI batteries, the continued validity of the EU type-approval for vehicles of categories M, N and O in accordance with Regulation (EU) 2018/858 requires that any battery which has been repaired or exchanged continues to comply with the applicable safety requirements. Where safety particulars have changed, further inspections or tests are required to verify continued compliance with the requirements upon which the existing EU type-approval has been based.**

**(14a) In line with the Zero Pollution Action Plan<sup>8</sup>, adopted by the Commission in 2021, EU policies should be based on the principle that preventive action should be taken at source. The Commission underlines in the Chemicals Strategy for Sustainability<sup>9</sup>, that the REACH and CLP Regulations should be reinforced as EU's cornerstones for regulating chemicals in the Union and that they should be complemented by coherent approaches to assess and manage chemicals in existing sectorial legislation<sup>10</sup>. The use of hazardous substances in batteries should therefore primarily be restricted at source in order to protect human health and the environment and to manage the presence of such substances in waste. This Regulation should complement the REACH and CLP Regulations and allow the adoption of risk management measures related to substances including the waste phase.**

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<sup>8</sup> (COM(2021) 400 final)

<sup>9</sup> (COM(2020) 667 final)

<sup>10</sup> Chemicals Strategy for Sustainability, 2020

- (15) ■ In addition to the restrictions, set out in Annex XVII of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>11</sup>, it is appropriate to set out restrictions for mercury, *cadmium and lead* in certain *categories* of batteries. Batteries used in vehicles which benefit from an exemption under Annex II to Directive 2000/53/EC of the European Parliament and of the Council<sup>12</sup> should be excluded from the prohibition to contain cadmium. *With a view to further restriction of substances contained in batteries or used in their manufacturing, it is appropriate to carry out a mapping of substances of concern, defined in the Chemical Strategy for Sustainability<sup>13</sup> as substances having a chronic effect for human health or the environment (such as substances in the Candidate list in REACH and in Annex VI to the CLP Regulation) but also those which hamper recycling for safe and high quality secondary raw materials, in the context of the substance evaluation planned in the REACH Evaluation Joint Action Plan<sup>14</sup>.*
- (16) In order to ensure that ■ substances that pose an unacceptable risk to human health or to the environment when used in batteries *or present in waste batteries*, can be duly addressed, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending restrictions on ■ substances in batteries.

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13 *COM(2020) 667 final*

14 *REACH Evaluation Joint Action Plan*

(17) The **assessment** procedure for adopting new and amending current restrictions on **substances in batteries and waste batteries** should be fully streamlined with Regulation (EC) No 1907/2006. To ensure effective decision-making, coordination and management of the related technical, scientific and administrative aspects of this Regulation, the European Chemicals Agency set up under Regulation (EC) No 1907/2006 ('the Agency') should carry out specified tasks with regard to the evaluation of risks from substances in the manufacture and use of batteries, as well as those that may occur after their end-of-life as well as the evaluation of the socio-economic elements and the analysis of alternatives, in accordance with relevant guidance by the Agency. Consequently, the Committees for Risk Assessment **and** Socio-economic Analysis of the Agency should facilitate the carrying out of certain tasks conferred on the Agency by this Regulation.

*(17a) In order to ensure that this Regulation is coherent with any future amendment of the provisions of Regulation (EC) No 1907/2006 or of other future Union legislation concerning sustainability criteria for hazardous substances and chemicals, the Commission should assess whether an amendment of Article 6, Article 71, 71a and 71b of this Regulation is required. Where appropriate, the Commission should propose amending this regulation in the future amendment of the provisions of regulation (EC) No 1907/2006 or with other future Union legislation concerning sustainably criteria for hazardous substances and chemicals.*

*(17b) In order to promote a sustainable European economic model, the Commission should, where appropriate, propose amendments to this Regulation to the provisions regulating the restrictions on substances in batteries and waste batteries, including the introduction of an export ban on batteries not compliant with such restrictions.*



(18) The expected massive deployment of batteries in sectors like mobility and energy storage should reduce **carbon** emissions, but to maximise this potential it is necessary that their overall life cycle has a low carbon footprint. According to the Product Environmental Footprint Category Rules for High Specific Energy Rechargeable Batteries for Mobile Applications<sup>15</sup>, climate change is the second highest related impact category for batteries after the **mining and** use of minerals and metals. The technical documentation for rechargeable industrial batteries **with a capacity above 2 kWh, light means of transport batteries and electric vehicle batteries** placed on the Union market should therefore be accompanied by a carbon footprint declaration. Harmonising the technical rules for calculating the carbon footprint for all rechargeable industrial batteries **with a capacity above 2 kWh, light means of transport batteries and electric vehicle batteries** placed on the Union market is a prerequisite for introducing a requirement for the technical documentation of the batteries to include a carbon footprint declaration and subsequently establishing carbon footprint performance classes that will allow identifying the batteries with overall lower carbon footprints. Information and clear labelling requirements on batteries' carbon footprint is not expected in itself to lead to the behavioural change necessary to ensure that the Union's objective to decarbonise the mobility and energy storage sectors is achieved, in line with the internationally agreed objectives on climate change<sup>16</sup>. ■ Therefore, maximum carbon thresholds will be introduced, further to a dedicated impact assessment to determine those values. In proposing the level of the maximum carbon footprint threshold, the

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<sup>15</sup> Product Environmental Footprint - Category Rules for High Specific Energy Rechargeable Batteries for Mobile Applications

[https://ec.europa.eu/environment/eussd/smgp/pdf/PEFCR\\_Batteries.pdf](https://ec.europa.eu/environment/eussd/smgp/pdf/PEFCR_Batteries.pdf)

<sup>16</sup> Paris agreement (OJ L 282, 19.10.2016, p. 4) and the United Nations Framework Convention on Climate Change, available at <https://unfccc.int/resource/docs/convkp/conveng.pdf>

Commission will, inter alia, take into account the relative distribution of the carbon footprint values in batteries on the market, the extent of progress in the reduction of carbon footprint of batteries placed on the Union market and the effective and potential contribution of this measure to the Union's objectives on sustainable mobility and climate neutrality by 2050 ***at the latest***. In order to bring about transparency on the batteries' carbon footprint, and shift the Union market towards lower carbon batteries, regardless of where they are produced, a gradual and cumulative increase in the carbon footprint requirements is justified. As a result of these requirements, the avoided carbon emissions in batteries' life cycle, will contribute to the Union's ***climate objectives, particularly that*** of reaching climate neutrality by 2050 ***at the latest***. This may also enable other policies at Union and national level, such as incentives or green public procurement criteria, fostering the production of batteries with lower environmental impacts.

***(18a) The maximum life cycle carbon footprint thresholds should be future-proof. Therefore, when adopting a delegated act determining the maximum life cycle carbon footprint threshold, the European Commission should take into account the best available manufacturing and production processes and ensure that the selected technical criteria are consistent with the objective of this Regulation of ensuring that batteries placed on the Union market guarantee a high level of protection of human health, safety, property and the environment.***

- (19) Certain substances contained in batteries, such as cobalt, lead, lithium or nickel, are acquired from scarce resources which are not easily available in the Union, and some are considered critical raw materials by the Commission. *In line with the Union's Industrial Strategy*<sup>17</sup>, Europe needs to enhance its strategic autonomy and increase its resilience in preparation for potential disruptions in supply due to health or other crises. Enhancing circularity and resource efficiency with increased recycling and recovery of those raw materials, will contribute to reaching that goal.
- (20) The increased use of recovered materials would support the development of the circular economy and allow a more resource-efficient use of materials, while reducing Union dependency on materials from third countries. For batteries, this is particularly relevant for cobalt, lead, lithium and nickel. Therefore, it is necessary to promote the recovery of such materials from waste, establishing a requirement on the level of recycled content in batteries using cobalt, lead, lithium and nickel in active materials. This Regulation sets mandatory recycled content targets for cobalt, lead, lithium and nickel and which should be met by 2030. For cobalt, lithium and nickel increased targets are established by 2035. All targets, should take into account the availability of waste, from which such materials can be recovered, the technical feasibility of the involved recovery and manufacture processes as well as the time needed by the economic operators to adapt their supply and manufacturing processes. Therefore, before such mandatory targets become applicable, the requirement related to recycled content should be limited to disclosure of information on recycled content.

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<sup>17</sup> *COM(2021) 350 final*

*Battery manufacturing waste is likely to be the main source of secondary raw materials for battery manufacturing during the production ramp-up and will be subject to the same recycling processes as post-consumer waste batteries. Therefore, it should be included in the recycled content targets with the objective to accelerate the development of the necessary recycling infrastructure. By-products of battery manufacturing reused in the same production process, such as manufacturing scrap, do not constitute waste and should therefore not be counted as part of the recycled content targets.*

(21) In order to take into account the risk of supply of cobalt, lead, lithium and nickel and to assess their availability, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the targets for the minimum share of recycled cobalt, lead, lithium or nickel present in active materials in batteries.

*(21a) In order to take into account changes in battery technologies impacting the types of materials that can be recovered, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of supplementing this Regulation to insert further raw materials and respective targets in the list of minimum shares of recycled content present in active materials in batteries.*

- (22) In order to ensure uniform conditions for the implementation of the rules on calculating and verifying, per battery model and █ per manufacturing plant, the *share* of cobalt, lead, lithium or nickel recovered from *battery manufacturing waste and post-consumer waste* present in active materials in batteries and the information requirements for technical documentation, *delegated* powers should be conferred on the Commission.

*For the purpose of those rules, the reutilisation of materials such as rework, regrind or scrap generated in the battery manufacturing process, which can be reclaimed within the same process that generated it, should be excluded.*

- (23) Batteries placed on the Union market should be durable and highly performant. It is therefore necessary to set out performance and durability parameters for portable batteries of general use as well as for rechargeable industrial batteries, *LMT batteries* and electric vehicle batteries. For electric vehicle batteries, the informal UNECE Working Group on Electric Vehicles and the Environment *has developed* in-vehicle durability requirements *that are to apply in the EU through type-approval of motor vehicles*, so this Regulation is *only sets information requirements on performance and durability of electric vehicle batteries*. On the other hand, in the area of batteries for energy storage, existing measurement methods to test battery performance and durability are not considered sufficiently precise and representative to enable introducing minimum requirements. The introduction of minimum requirements related to performance and durability of these batteries should be accompanied by available adequate harmonised standards or common specifications.

- (24) In order to reduce the life cycle environmental impact batteries, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the performance and durability parameters and establishing minimum values for those parameters for portable batteries of general use and for rechargeable industrial batteries *and electric vehicle batteries. The acts adopted in this context should also establish how those minimum values will apply to batteries that have been subject to remanufacturing.*
- (24a) *In order to ensure that the Union's rules on electrochemical performance and durability for electric vehicle batteries are coherent in relation to technical specifications of the informal UNECE Working Group on Electric Vehicles and the Environment and in view of technical and scientific progress, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the performance and durability parameters for electric vehicle batteries. For minimum values of those parameters for electric vehicles batteries incorporated in motor vehicles, it is appropriate to set minimum performance requirements through regulation on type-approval of motor vehicles and engines with respect to their emissions [replace with final title of Euro 7 proposal], based on minimum performance requirements adopted in United Nations Global Technical Regulation No.22 on in-vehicle battery durability for electrified vehicles.*<sup>18</sup>

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<sup>18</sup> *UN GTR No.22 (In-vehicle Battery Durability for Electrified Vehicles) | UNECE*

- (25) Some non-rechargeable batteries of general use may imply an inefficient use of resources and energy. Objective requirements regarding the performance and durability of such batteries should be established in order to ensure that fewer low performing non-rechargeable portable batteries of general use are placed on the market, in particular, where, based on a life cycle assessment, the alternative use of rechargeable batteries would result in overall environmental benefits. *For batteries incorporated in mobile phones and tablets it is appropriate to set performance and durability requirements on their batteries through an eco-design regulation addressing phones and tablets [reformulate and replace with specific title + OJ reference if published before this Regulation] and to update Implementing Regulation 617/2013 on computers and computer servers. For other portable batteries incorporated in other appliances, such as gardening tools or cordless power tools, the possibility to set minimum performance and durability requirements should be addressed in relevant product legislation, such as implementing regulations under the Ecodesign Directive, or other applicable instrument.*

- (26) In order to ensure that portable batteries incorporated into appliances are subject to proper separate collection, treatment and high quality recycling once they have become waste, provisions to ensure their removability and replaceability in such appliances are necessary. ***Where portable batteries are to be removed or replaced in an appliance, this should be done while securing consumer safety, in line with EU safety standards and legislation. A portable battery should be considered readily removable by the end-user when it can be removed with the use of commercially available tools, without requiring the use of specialised tools, unless provided free of charge, proprietary tools, thermal energy or solvents to disassemble. Commercially available tools are tools available on the market to all end users without the need for them to provide evidence of any proprietary rights and that can be used with no restriction, except for health and safety reasons.*** The general provisions of this Regulation ***should apply without prejudice to the safety and maintenance requirements for professional medical imaging and radiotherapy devices as defined in of Regulation 2017/745 on Medical Devices and for In-vitro Diagnostic medical devices as defined in Regulation 2017/746 on In-vitro Diagnostic Medical Devices, and*** may be complemented with requirements set up for particular products powered by batteries under implementing measures under Directive 2009/125/EC of the European Parliament and of the Council<sup>19</sup>. Where other Union legislation lays down more specific requirements, for safety reasons, regarding the removal of batteries from products (e.g. toys), those specific rules should apply.

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*(26a) To ensure the safety of end-users, this Regulation should allow for a limited derogation from the removability and replaceability requirements set for portable batteries for appliances that are specifically designed to be used, for a majority of the active service of the appliance, in an environment that is regularly subject to splashing water, water streams or water immersion and that are intended to be washable or rinseable. This derogation should only apply when it is not possible, by way of redesign of the appliance, to ensure the safety of the end user and the safe continued use of the appliance after the end-user has correctly followed the instructions to remove and replace the battery. When the derogation applies, the product may be designed in such a way as to make the battery removable and replaceable only by independent operators, and not by end-users.*

*(26aa) For repaired electric vehicle batteries and SLI batteries, the safety requirements of Regulation (EU) 2019/2144 apply to type-approved vehicles of categories M, N and O and batteries designed and constructed for those vehicles. It is important that the safety of such batteries when repaired can be assessed based on non-destructive tests adapted to them. For repaired light means of transport batteries, the Commission will prepare rules on the safety of micromobility devices, building on experience at national and local levels on safety requirements, as announced in the new EU Urban Mobility Framework<sup>20</sup>. For other repaired batteries intended for consumers or likely to be used by them, the requirements of Directive 2001/95/EC on general product safety apply as a safety net.*

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<sup>20</sup> COM(2021)811

- (26b) Interoperability of chargers within specific categories of batteries could reduce unnecessary waste and costs for the benefit of consumers and other end-users. It should be possible therefore to recharge batteries for light means of transport, and rechargeable batteries incorporated into specific categories of electrical and electronic equipment by making use of common chargers that allow interoperability within each category of batteries. This Regulation should therefore include provisions requiring the Commission to assess how to introduce harmonised standards for common chargers for those categories of batteries, excluding charging devices for categories and classes of radio equipment under Article 3(4) of Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment.***
- (26c) SLI batteries and electric vehicle batteries incorporated in motor vehicles should be removable and replaceable by independent professionals. It is appropriate to consider provisions, including as regards joining, fastening and sealing elements, to ensure that those batteries can be removed, replaced and disassembled through relevant legislative proposal to revise Directive 2000/53/EC . For the purposes of the design, manufacturing and the repair of SLI batteries and electric vehicle batteries, manufacturers should provide the relevant vehicle on-board diagnostic information and vehicle repair and maintenance information on a non-discriminatory basis to any interested manufacturer, installer or repairer of equipment for vehicles of categories M, N and O as provided for in Regulation (EU) 2018/858. Further, the Commission should encourage the development of standards for design and assembly techniques that facilitate the maintenance, repair and repurpose of batteries and battery packs.***

- (27) Reliable batteries are fundamental for the operation and safety of many products, appliances and services. Therefore, batteries should be designed and manufactured to ensure their safe operation and use, ***in order not to cause harm or damage to humans or to the environment or property***. This aspect is particularly relevant for stationary battery energy storage systems, which are currently not covered by other Union legislation. Parameters to be considered in safety tests should therefore be laid down for those ***batteries and be complemented by applicable CEN, CENELEC and IEC standards***.
- (28) In order to provide ***end-users*** with transparent, reliable and clear information about batteries and their main characteristics, and waste batteries, to enable the ***end-users*** to make informed decisions when buying and discarding batteries and to enable waste operators to appropriately treat waste batteries, batteries should be labelled. Batteries should be labelled with all the necessary information concerning their main characteristics, including their capacity and content of certain hazardous substances. To ensure the availability of information over time, that information should also be made available by means of QR codes, ***which should respect the guidelines of ISO IEC Standard 18004. The QR code printed or engraved on all batteries should give access to a battery's product passport. Labels and QR codes should be accessible for persons with disabilities in accordance with the requirements laid down in Directive (EU) 2019/882 of the European Parliament and of the Council<sup>21</sup>***.

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<sup>21</sup> ***Directive (EU)2019/882 of the European Parliament and of the Council on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).***

- (29) Information about the performance of batteries is essential to ensure that end-users, *especially* consumers, are well and timely informed and in particular that they have a common basis to compare different batteries before making their purchase. Therefore, *non-rechargeable portable* batteries should be marked with a label *indicating ‘non-rechargeable’ and* containing the information on their minimum average duration when used in specific applications. Additionally, it is important to guide the end-user to discard waste batteries in an appropriate way.
- (30) *For stationary battery energy storage systems, LMT batteries and electric-vehicle batteries using a battery management system (BMS), that BMS should store data so that the state of health and expected lifetime of batteries may be determined at any time by the end-user or any other third party acting on his behalf. Read-only access to such data in the battery management system should be provided to the person that has purchased the battery or any third party acting on its behalf at any time for evaluating the residual value of the battery, facilitating the preparing for re-use, preparing for repurpose, repurposing or remanufacturing of the battery and for making the battery available to independent aggregators, as defined in Directive (EU) 2019/944 of the European Parliament and of the Council<sup>1</sup>, which operate virtual power plants in electricity grids. Thus, such data should be up to date for these purposes, at least updated daily and more frequently where this is required by a specific purpose.* Technical specifications that ■ originate from the work of the ■ UNECE Working Group on Electric Vehicles and the Environment on data access in electric vehicles *should be considered as a benchmark for the state of health and expected lifetime of electric vehicle batteries. This requirement should apply in addition to Union law on type-approval of vehicles, which is the appropriate legal framework to address, amongst others, smart charging functions such as vehicle-to-grid, vehicle-to-load, vehicle-to-vehicle and vehicle-to-powerbank and vehicle-to-building charging.*

(31) A number of product-specific requirements under this Regulation, including on performance, durability, repurposing and safety, should be measured by using reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art measurements, *standards* and calculation methodologies. In order to ensure that there are no barriers to trade on the internal market, standards should be harmonised at Union level. Such methods and standards should, to the extent possible, take into account the real-life usage of batteries, reflect the average range of consumer behaviour and be robust in order to deter intentional and unintentional circumvention. Once a reference to such a standard has been adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council<sup>22</sup> and published in the Official Journal of the European Union, presumption of conformity shall be established with those product-specific requirements adopted on the basis of this Regulation, provided that the outcome of such methods demonstrate that the minimum values established for those substantive requirements are attained. ***In order to avoid doubling of standards, to maximise efficiency and to include the highest expertise and state-of-the art knowledge, the Commission should seek to request one or more European standardisation organisations to draft a standard where there is an absence of such a standard. In the absence of published standards at the time of the application of product-specific requirements, or in the event of a non satisfactory response by the relevant European standardisation organisation the***

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<sup>22</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12)

Commission should adopt, *in exceptional, justified cases and after consultation with the relevant stakeholders*, common specifications through implementing acts and the compliance with such specifications should also give rise to the presumption of conformity. In cases where the common specifications are, at a later stage, found to have shortcomings, the Commission should by implementing act amend or repeal the common specifications in question.

*Any common specifications should be repealed at the moment when reference numbers of harmonised standards are being published in the Official Journal, with a reasonable period in order to allow manufacturers to take into account the changes.*

- (31a) An active involvement in the work of international standardisation committees is an important strategic prerequisite for placing future battery technologies into the market. In some cases, the European involvement in these committees has been less effective and should be improved to strengthen the EU's voice in global standardisation, also with the view to enhance competitiveness of companies, reduce dependencies and protect interests, policy objectives and values of the Union. Therefore, the Commission and the Member States should monitor and coordinate the European approach to international standardisation. Standards to support this regulation should take into account existing international standards, in particular at IEC and ISO level.*
- (31b) The Commission should ensure that there is consistency regarding harmonised standards and common specifications under this regulation and when reviewing Regulation (EU) No 1025/2012.*

- (32) To ensure effective access to information for market surveillance purposes, to adapt to new technologies and to ensure resilience in case of global crises, such as the Covid-19 pandemic, it should be possible to give information regarding conformity with all Union acts applicable to batteries online in the form of a single EU declaration of conformity.
- (33) Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>23</sup> lays down rules on the accreditation of conformity assessment bodies, provides a framework for the market surveillance of products and for controls on products from third countries, and lays down the general principles of the CE marking. That Regulation should be applicable to batteries covered by this Regulation in order to ensure that products benefiting from the free movement of goods within the Union fulfil requirements providing a high level of protection of public interests such as human health, safety and the environment.

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<sup>23</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30)

- (34) In order to enable economic operators to demonstrate and the competent authorities to verify that batteries made available on the market comply with the requirements of this Regulation, it is necessary to provide for conformity assessment procedures. Decision No 768/2008/EC of the European Parliament and of the Council<sup>24</sup> establishes modules for conformity assessment procedures, ranging from the least stringent to the most stringent depending on the level of risk involved and the level of safety required. According to Article 4 of that Decision, where conformity assessment is required, the procedures to be used for that assessment are to be chosen from among those modules.

***Robust conformity assessment procedures are needed to ensure that there is conformity with the novelty and complexity of carbon footprint, recycled content and due diligence obligations set out in this Regulation.***

- (36) The CE marking on a battery indicates the conformity of that battery with this Regulation. General principles governing the CE marking and its relationship to other markings are set out in Regulation (EC) No 765/2008. Those principles should apply to the CE marking on batteries. In order to ensure that the battery is stored, used and discarded in a manner which is safe from the point of view of protecting human health and the environment, specific rules governing the affixing of the CE marking in the case of batteries should be laid down.

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<sup>24</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13.8.2008, p. 82



- (37) The conformity assessment procedures set out in this Regulation require the intervention of conformity assessment bodies. In order to ensure a uniform implementation of the provisions in this Regulation, those bodies should be notified by the Member State authorities to the Commission.
- (38) Due to the novelty and complexity of the sustainability, **performance**, safety, **labelling and information** requirements for batteries and in order to ensure a consistent level of quality in the performance of conformity assessment of batteries, it is necessary to set requirements for notifying authorities involved in the assessment, notification and monitoring of notified bodies. In particular, it should be ensured that the notifying authority is objective and impartial with regard to its activity **and has a sufficient number of technically competent members of staff to perform its tasks**. Furthermore, notifying authorities should be required to safeguard the confidentiality of the information it obtains but should nonetheless be able to exchange information on notified bodies with national authorities, the notifying authorities of other Member States and the Commission to ensure consistency in the conformity assessment.
- (39) It is essential that all notified bodies perform their functions to the same level and under conditions of fair competition and autonomy. Therefore, requirements for conformity assessment bodies wishing to be notified in order to provide conformity assessment activities should be set. Those requirements should continue to apply as a prerequisite for the maintenance of the competence of the notified body. To ensure its autonomy, the notified body and the staff it employs should be required to maintain independence from economic operators in the battery value chain and from other companies, including business associations and parent companies and subsidiaries. The notified body should be required to document its independence and provide that documentation to the notifying authority. **The notified bodies should ensure rotation of the personnel carrying out different conformity assessment tasks.**

- (40) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards it should be presumed to comply with the corresponding requirements set out in this Regulation.
- (41) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. Certain activities and decision-making processes, both regarding the conformity assessment of batteries and other activities internal to the notified body, should however exclusively be carried out by the individual notified body itself, in order to ensure its independence and autonomy. Furthermore, in order to safeguard the level of protection required for batteries to be placed on the Union market, conformity assessment subcontractors and subsidiaries should fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks under this Regulation.
- (42) Since the services offered by notified bodies in a Member State might relate to batteries made available on the market throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. ***The Commission, during the investigation proceedings, could seek the advice of a Union testing facility, when designated in accordance with Regulation (EU) 2019/1020.*** In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in order to request the notifying authority to take corrective action in case a notified body does not meet or no longer meets the requirements of this Regulation.

- (43) In the interests of facilitating and accelerating the conformity assessment procedure, the certification and ultimately the market access and in view of the novelty and complexity of the sustainability, safety, **labelling and information** requirements for batteries, it is crucial that notified bodies have continuous access to all testing equipment and testing facilities needed and that they apply the procedures without creating unnecessary burdens for economic operators. For the same reason, and to ensure equal treatment of economic operators, it is necessary that the notified bodies apply the conformity assessment procedures consistently.
- (44) Prior to taking a final decision on whether the battery can be granted a conformity certificate, the economic operator that wishes to place a battery on the market should be allowed to complement once the documentation on the battery.
- (45) The Commission should enable appropriate coordination and cooperation between notified bodies.
- (46) It is appropriate to lay the obligations linked to the placing on the market or putting into service of a battery on the economic operators, which include the manufacturer, the authorised representative, the importer, the distributor, the fulfilment service providers, or any other legal person who takes on the legal responsibility in relation to the manufacture of batteries, making them available or placing them on the market or putting them into service, ***including batteries that have been subject of preparing for re-use, preparing for repurpose or repurposing, or remanufacturing.***

- (46a) It is appropriate to ensure that requirements for a battery, which is put into service without being placed on the market beforehand, are the same as for batteries placed on the market. This concerns for example batteries that the manufacturer uses for its own purposes, or batteries that, because of their characteristics, can only be assembled and tested on-site in their final destination. However, to avoid the need to demonstrate compliance twice for the same product, batteries that are placed on the market should not be subject again to the same requirements when they are put into service.***
- (47) Economic operators should be responsible for the compliance of batteries with the requirements of this Regulation, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of public interests, such as human health, safety and protection of property and the environment.
- (48) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market batteries which are in conformity with this Regulation. It is necessary to provide for a clear and proportionate distribution of obligations which correspond to the role of each economic operator in the supply and distribution chain.
- (49) The manufacturer, having detailed knowledge of the design and production process, is best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer.

- (50) The manufacturer should provide sufficiently detailed information on the intended use of the battery so as to allow its correct and safe placing on the market, putting into service, use and *waste* management, including possible repurposing.
- (51) In order to facilitate communication between economic operators, market surveillance authorities and *end-users*, economic operators should, as part of their contact details, indicate a *postal, email and website* address.
- (51a) A fairer single market should ensure equal conditions for competition to all economic operators and protection against unfair competition. To this end, strengthened enforcement of Union harmonisation legislation on batteries is necessary. Good cooperation between economic operators and the market surveillance authorities is a key element, allowing immediate intervention and corrective action in relation to batteries. It is important that there should be an economic operator established in the Union so that market surveillance authorities have someone to whom requests can be addressed, including requests for information regarding a battery's compliance with Union harmonisation legislation, and who can cooperate with market surveillance authorities in making sure that immediate corrective action is taken to remedy instances of non-compliance. The economic operators who should perform those tasks are the manufacturer, or the importer when the manufacturer is not established in the Union, or an authorised representative mandated by the manufacturer for this purpose, or a fulfilment service provider established in the Union for batteries handled by it when no other economic operator is established in the Union.***

- (52) It is necessary to ensure that batteries from third countries entering the Union market comply with the requirements of this Regulation, **and with relevant applicable Union law**, whether imported as self- standing batteries or contained in products, and in particular that appropriate conformity assessment procedures have been carried out by manufacturers with regard to those batteries. Provision should therefore be made for importers to make sure that the batteries they place on the market and put into service comply with the requirements of this Regulation and that the CE marking on batteries and documentation drawn up by manufacturers are available for inspection by the national authorities, **whether imported as new or used batteries or batteries that have been subject to preparing for reuse, preparing for repurpose, or repurposing or remanufacturing**.
- (53) When placing a battery on the market or putting it into service, every importer should indicate on the battery the importer's name, registered trade name or registered trade mark as well as the postal address **and e-mail address, where one exists**. Exceptions should be provided for in cases where the size of the battery does not allow it **because the battery is too small in size to affix that information**. **Exceptions should also be provided for in** cases where the importer would have to open the packaging to put the name and **the other contact details**. **In those exceptional cases, the importer should provide that information in a document accompanying** the battery or **in another immediately accessible way**. Where **packaging exists, it should be used to indicate** this information.
- (54) As the distributor makes a battery available on the market after it has been placed on the market or put into service by the manufacturer or the importer, the distributor should act with due care to ensure that its handling of the battery does not adversely affect its compliance with the requirements of this Regulation.

- (55) Any importer or distributor that either places a battery on the market or puts it into service under the importer's or distributor's own name or trademark or modifies a battery in such a way that compliance with the requirements of this Regulation may be affected or modifies the purpose of a battery that is already place on the market should be considered to be the manufacturer and should assume the obligations of the manufacturer.
- (56) Distributors, **importers and fulfilment service providers**, being close to the market place, should be involved in market surveillance tasks carried out by the national authorities, and should be prepared to participate actively, providing those authorities with all necessary information relating to the battery concerned.
- (57) Ensuring traceability of a battery throughout the whole supply chain helps to make market surveillance simpler and more efficient, **and provides transparency to consumers**. An efficient traceability system facilitates the market surveillance authorities' task of tracing economic operators who placed on the market or made available on the market or put into service **non-compliant** batteries. The economic operators should therefore be required to keep the information on their transactions of batteries for a certain period of time, **including in electronic form**.
- (58) The extraction, processing and trading of natural mineral resources is fundamental in providing the necessary raw materials for the production of batteries. Battery manufacturers, regardless of their position or leverage over suppliers and of their geographical location, are not insulated from the risk of contributing to adverse impacts in the mineral supply chain. For some raw materials, over half of global production is for use in battery applications. For example, over 50% of the global demand for cobalt and over 60% of the world's lithium is used for battery production. About 8% of global natural graphite production and 6% of global nickel production goes into battery manufacturing.

- (59) Only few countries supply those materials and, in some cases, low standards of governance may exacerbate environmental and social problems. Both cobalt and nickel mining and refining are related to a large range of social and environmental issues, including environmental hazard potential and human health. While the social and environmental impacts for natural graphite are less severe, its mining has high shares of artisanal and small scale operations, which mostly takes place in informal settings and can lead to serious health and environmental impacts, including no regular mine closure and no rehabilitation, which results in the destruction of ecosystems and soils. For lithium, the expected increase in its use in battery manufacturing is likely to put additional pressure on extraction and refining operations, what would recommend including lithium in the scope of the **battery** due diligence obligations. The expected massive increase in demand for batteries in the Union should not contribute to an increase of such environmental and social risks.
- (60) Some of the raw materials in question, such as cobalt, lithium and natural graphite, are considered as critical raw materials for the EU<sup>25</sup> and their sustainable sourcing is required for the EU battery ecosystem to perform adequately.
- (61) A number of voluntary efforts from actors in the battery supply chain are already in place in order to encourage adherence to sustainable sourcing practices, including the Initiative for Responsible Mining Assurance (IRMA), the Responsible Minerals Initiative (RMI) and the Cobalt Industry Responsible Assessment Framework (CIRAF). However, voluntary efforts to set up due diligence schemes may not ensure that all economic operators placing batteries in the Union market abide by the same set of minimum rules.

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<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability (COM(2020) 474 final).



- (62) In the Union, general requirements on due diligence in relation to certain minerals and metals were introduced by Regulation (EU) No 2017/821 of the European Parliament and of the Council<sup>26</sup>. That Regulation does not, however, address the minerals and materials used for battery production.
- (63) Therefore, in view of the expected exponential growth in battery demand in the EU, the economic operator that places a battery on the EU market should set up a supply chain due diligence policy. The requirements therefore should be laid down, with the objective to address the social and environmental risks inherent in the extraction, processing and trading of certain raw materials *and secondary raw materials* for battery manufacturing purposes. ***It should encompass suppliers in the chain, and their subsidiaries or subcontractors, that perform such activities.***

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<sup>26</sup> Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ L 130, 19.5.2017, p. 1)

(64) When putting in place a risk-based due diligence policy, it should be based on internationally recognised due diligence *standards and* principles in the *United Nations Guiding Principles on Business and Human Rights*, the Ten Principles of the United Nations Global Compact<sup>27</sup>, the Guidelines for Social Life Cycle Assessment of Products<sup>28</sup>, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy<sup>29</sup>, *the OECD Guidelines for Multinational Enterprises* and the OECD Due Diligence Guidance for Responsible Business Conduct (RBC)<sup>30</sup>, which reflect a common understanding amongst governments and stakeholders, and should be tailored to the specific context and circumstances of each economic operator. In relation to the extraction, processing and trading of natural mineral resources used for battery production, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>31</sup> (‘OECD Due Diligence Guidance’) represents *an internationally acknowledged standard addressing specific risks of gross human rights violations, and a* long-standing effort by governments and stakeholders to establish good practice in this area.

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(65) According to the *UN, ILO and OECD standards and principles*, due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights, *the environment* and do not contribute to conflict.<sup>32</sup> Risk-based due diligence refers to the steps companies should take to identify, *prevent, mitigate and otherwise address* adverse impacts associated with their activities or sourcing decisions. *Economic operators should conduct informed, effective and meaningful consultation with affected communities*. A company can assess risk posed by its activities and relationships and adopt risks mitigating measures, *which may include requiring additional information, negotiating with a view to redress the situation, or suspending or discontinuing engagement with suppliers*, in line with relevant standards provided under national and international law, recommendations on responsible business conduct by international organisations, government-backed tools, private sector voluntary initiatives and a company's internal policies and systems. This approach also helps to scale the due diligence exercise to the size of the company's activities or supply chain relationships.

*(65a) While private sector due diligence schemes can support economic operators in fulfilling their due diligence obligation in line with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, economic operators should be individually responsible for compliance with the battery due diligence obligations set out in this Regulation.*

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- (66) Mandatory **battery** due diligence policies should be adopted or modified and address, at least, the most prevalent social and environmental risk categories. This should cover the current and foreseeable impacts, on one hand, on social life, in particular human rights, human health and safety as well as occupational health and safety and labour rights, and, on the other hand, on the environment, in particular on water use, soil protection, air pollution, **climate change** and biodiversity, including community life.
- (67) As regards the social risk categories, due diligence policies should address the risks in relation to the protection of human rights, including human health, **community life, including that of indigenous peoples, the** protection of children and gender equality, in line with international human rights law<sup>33</sup>. The due diligence policies should include information on how the economic operator has contributed to the prevention of human rights abuses and on the instruments in place with the operator's business structure to fight corruption and bribery. The due diligence policies should also ensure correct implementation of the rules of fundamental conventions of the International Labour Organisation<sup>34</sup> as listed in Annex I of the ILO Tripartite Declaration.

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<sup>33</sup> Including The Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights, The International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

<sup>34</sup> The eight fundamental Conventions are 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 3. Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol), 4. Abolition of Forced Labour Convention, 1957 (No. 105), 5. Minimum Age Convention, 1973 (No. 138), 6. Worst Forms of Child Labour Convention, 1999 (No. 182), 7. Equal Remuneration Convention, 1951 (No. 100), 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

- (67a) *Human rights abuses are common in resource-rich conflict-affected and high-risk areas. Therefore, such areas deserve specific attention in the due diligence system of economic operators. Regulation (EU) No 2017/821 includes provisions for an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas<sup>2</sup>. Such list is also relevant for the implementation of the due diligence provision of this Regulation.*
- (68) As regards the environmental risk categories, the due diligence policies should address the risks in ■ relation to protection of the natural environment and of the biological diversity in line with the Convention on Biological Diversity<sup>35</sup>, which includes also the consideration of local communities, and the protection and the development of those communities. ***It should also address the risks in relation to climate change, in line with the Paris Agreement, as well as environmental risks covered by other international environmental conventions.***
- (69) The ***battery*** due diligence obligations on the identification and mitigation of social and environmental risks associated with raw materials going into battery manufacturing should contribute to the implementation of UNEP Resolution 19 on Mineral Resource Governance, which recognizes the important contribution of the mining sector towards the achievement of the 2030 Agenda and the Sustainable Development Goals.

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<sup>35</sup> Such as set out in the Convention on biological diversity, available at <https://www.cbd.int/convention/text/> and, in particular, Decision COP VIII/28 "Voluntary guidelines on Biodiversity-Inclusive impact assessment, available at <https://www.cbd.int/decision/cop/?id=11042> .

- (70) Other EU legislative instruments that lay down requirements regarding supply chain due diligence should apply in so far as there are no specific provisions with the same objective, nature and effect in this Regulation which may be adapted in the light of future legislative amendments. *Such instruments may address civil liability of companies for damages arising due to their failure to comply with due diligence requirements. Where such instruments do not or not completely address civil liability of due diligence requirements of this Regulation, national rules may address such civil liability.*
- (71) In order to adapt to developments in the battery value chain, including to changes in the scope and nature of the relevant environmental and social risks, as well as to technical and scientific progress in batteries and battery chemistries, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the list of raw materials and risk categories and the **battery** due diligence requirements.

- (72) Harmonised rules for waste management are necessary to ensure that producers and other economic operators are subject to the same rules across the Member States in the implementation of the extended producer responsibility for batteries ***and to ensure a high level of protection of human health and the environment across the Union. Extended producer responsibility can contribute to reducing overall resource use, in particular by reducing the generation of battery waste and the adverse impacts linked to the management of battery waste.*** Maximising separate collection of waste batteries and ensuring that all batteries collected are recycled through processes that reach common minimum recycling efficiencies is necessary to attain a high level of material recovery. The evaluation of the Directive 2006/66/EC found that one of its shortcomings is lack of detail in its provisions, leading to uneven implementation and creating significant barriers to the functioning of recycling markets and suboptimal levels of recycling. Consequently, more detailed and harmonised rules should avoid distortion of the market for the collection, treatment and recycling of waste batteries, ensure even implementation of the requirements across the Union, further harmonisation of the quality of waste management services provided by economic operators and facilitate the markets of secondary raw materials.
- (72a) ***In order to ensure that obligations arising from this Regulation are carried out and to monitor and verify compliance of producers and producer responsibility organisations with the requirements of this Regulation, it is necessary that Member States designate one or more competent authorities.***

(73) This Regulation builds on the waste management rules and general principles laid down in Directive 2008/98/EC of the European Parliament and of the Council<sup>36</sup>, which should be adapted to reflect the specific *nature of battery waste*. For the collection of waste batteries to be organised in the most effective way, it is important that this is done in close connection to the place where the batteries are sold in a Member State, and close to the end user. *Waste batteries should be collected separately from other waste streams, such as metals, paper and cardboard, glass, plastics, wood, textiles and bio-waste*. Also, waste batteries may be collected both together with waste electrical and electronic equipment and with end-of-life vehicles, by way of national collection schemes set up on the basis of Directive 2012/19/EU of the European Parliament and of the Council<sup>37</sup>, and of Directive 2000/53/EC. While the current Regulation sets up specific rules for batteries there is a need for a coherent and complementary approach, building upon and further harmonising existing waste management structures. Consequently, and in order to effectively realise extended producer responsibility related to the waste management, obligations should be laid down with respect to the Member State where batteries are made available on the market for the first time.

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<sup>36</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

<sup>37</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p.38).



- (74) In order to monitor that producers meet their obligations to ensure the waste treatment of batteries made available on the market for the first time within the territory of a Member State, it is necessary that a register is established in and managed by the competent authority in each Member State. ***The information in the register should be accessible to those entities that play a role in the verification of the compliance with the extended producer responsibility obligations and their enforcement. That register may be the same as the national register set up pursuant to Directive 2006/66/EC. Producers should be obliged to register, in order to provide the necessary information to allow the competent authorities to monitor that the producers comply with their obligations. Registration requirements should be simplified across the Union.***
- (74a) ***In case of state run producer responsibility organisations, where there is no represented producer's mandate, the requirements provided in the Regulation concerning such mandate do not apply.***
- (75) In view of the polluter pays principle, it is appropriate to lay the obligations for the end-of-life management of batteries on producers which should include any manufacturer, importer or distributor who, irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU of the European Parliament and of the Council<sup>38</sup>, supplies a battery for the first time for distribution or use, including when incorporated into appliances, ***light means of transport*** or vehicles, within the territory of a Member State on a professional basis.

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<sup>38</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

(76) Producers should have extended producer responsibility for the management of their batteries at the end-of-life stage. Accordingly, they should finance the costs of collecting, treating and recycling all collected batteries, *carrying out compositional surveys of mixed collected municipal waste*, reporting on batteries and waste batteries, *and of providing information to end-users and waste operators about batteries and appropriate re-use and management of waste batteries*. The *new rules on extended producer responsibility under this Regulation need to ensure a high level of environmental and health protection in the EU by maximising separate collection of waste batteries and ensuring that all collected batteries are recycled through processes that reach high recycling efficiencies and material recovery in light of technical and scientific progress*. The obligations related to extended producer responsibility should apply to all forms of supply, including distance selling. Producers should be able to exercise those obligations collectively, by means of producer responsibility organisations taking up the responsibility on their behalf. Producers or producer responsibility organisations should be subject to authorisation and they should document that they have the financial means to cover the costs entailed by the extended producer responsibility. *Member States when laying down administrative and procedural rules of authorisation of producers for individual and producer responsibility organisations for collective compliance could differentiate processes for individual producers and producer responsibility organisations to limit the administrative burden on individual producers. In this context permits issued in accordance with Directive 2008/98/EC may be considered an authorisation for in the purposes of this Regulation*. Where necessary to avoid distortion of the internal market and to ensure uniform conditions for the modulation of the financial contributions paid to producer responsibility organisations by producers, implementing powers should be conferred on the Commission.

*Waste management operators carrying out collection and treatment in accordance with this Regulation should be subject to a selection procedure by producers of the relevant batteries or by producer responsibility organisations acting on their behalf, in accordance with Articles 8 and 8a of Directive 2008/98/EC. In case of waste management operations taking place in a Member State different than that where a battery was made available on the market for the first time, producers should cover the costs incurred by the waste management operators in the Member State where the waste operations take place. In the discussion on possible proposals for Union legislative acts on end-of-life vehicles and waste electrical and electronic equipment, the establishment of a cross-border extended producers responsibility mechanisms for waste batteries, including those incorporated into vehicles or appliances, between the relevant actors, should be considered. Furthermore, the adoption of other measures should be considered, such as information management and verification tools, including, as appropriate, authorised representatives for extended producer responsibility, waste management operators, producer responsibility organisations, digital product passport and producer registers, and national vehicle registration systems when covering electric vehicle batteries.*

*(76a) Extended producer responsibility should apply to economic operators placing on the market a battery that results from preparing for reuse, preparing for repurpose, repurposing or remanufacturing operations. Therefore, the economic operator that placed the original battery on the market should not bear additional costs that may result from the waste management arising from the subsequent life of this battery. The economic operators subject to extended producer responsibility may establish a cost sharing mechanism based on the actual attribution of the waste management costs.*

(77) This Regulation *is a lex specialis in relation to Directive 2008/98/EC for these following extended producer responsibility minimum requirements: collection and recycling targets, distributor take-back, second life. The Member state have to define the parameters for extended producer responsibility provided by this Regulation, in accordance with the provisions of Directive 2008/98/EC and consistently with national law transposing that Directive.*

*In addition, where this Regulation does not provide for full harmonisation in chapter VII, Member State may provide for additional measures on these specific topics in accordance with the provisions of Directive 2008/98/EC and consistently with national law transposing that Directive. These additional rules should be consistent with the rules in the Regulation, but may further regulate the non-harmonised topics covered by the Regulation.*

***(77a) This Regulation should specify how the traceability of traders obligations laid down in Article 30(1), points (d) and (e), of Regulation (EU) 2022/2065 are to be applied to online platforms allowing consumers to conclude distance contracts with producers offering batteries, including those incorporated in appliances, light means of transport or vehicles, to consumers located in the Union in relation to the registers of battery producers established pursuant to this Regulation. In the context of this Regulation, any producer offering batteries, including those incorporated in appliances, light means of transport or vehicles, by means of distance communication directly to consumers located in a Member State, whether they are established in a Member State or a third country, should be considered to constitute a trader within the meaning of the definition of trader in Regulation (EU) 2022/2065. In line with Regulation (EU) 2022/2065, providers of online platforms, falling within the scope of Section 4 of Chapter 3 of Regulation (EU) 2022/2065, allowing consumers to conclude distance contracts with producers should obtain from those producers information on the register of producers where they are registered as well as their registration number and a self-certification committing to comply with the extended producer responsibility rules set out in this Regulation. The implementation of the traceability of traders rules for the sale of batteries online are subject to the enforcement rules laid down in Chapter IV of Regulation (EU) 2022/2065.***

- (78) In order to ensure high quality recycling in the batteries supply chains, boost the uptake of quality secondary raw materials and protect the environment, a high level of collection and recycling of waste batteries should be the rule. The collection of waste batteries is a fundamental crucial step for closing the loop for the valuable materials contained in batteries through their recycling and to keep the batteries value chain inside the Union ***and boost its strategic autonomy in this sector***, thus facilitating the access to the recovered materials that can further be used to manufacture new products.
- (79) Producers of all batteries should be responsible for financing and organising the separate collection of waste batteries. They should do so by establishing a ***take-back and*** collection network that covers the whole territory of the Member States, that is close to the end user and that does not only target areas and batteries where the collection is profitable. The collection network should include any distributor, authorised treatment facility for waste electric and electronic equipment and end-of-life vehicles, civic amenity sites and other actors based on their own accord, such as public authorities and schools. In order to verify and improve the effectiveness of the collection network and the information campaigns, regular compositional surveys at least at NUTS 2 level<sup>39</sup> should be carried out on mixed municipal waste and waste electrical and electronic equipment collected to determine the amount of waste portable batteries therein.

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<sup>39</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)(OJ L 154 21.6.2003, p. 1).

- (80) Batteries may be collected together with waste electrical and electronic equipment, by way of national collection schemes set up on the basis of Directive 2012/19/EU and with end-of-life vehicles in accordance with Directive 2000/53/EC. In this case, as an obligatory minimum treatment requirement, batteries should be removed from the collected waste appliances and end-of-life vehicles. After their removal, batteries should be subject to the requirements of this Regulation, notably they should be counted towards the attainment of the collection target for the *category* of battery in question and be subject to treatment and recycling requirements laid down in this Regulation.

(81) Considering the environmental impact and the loss of materials due to waste batteries not being separately collected, and consequently not treated in an environmentally sound way, the collection target for portable batteries already established under Directive 2006/66/EC should continue to apply and should be gradually increased. ***In view of the current increase in sales of LMT batteries and their longer lifespan, it is relevant to set specific collection rate for this category of batteries separated from the collection rate for portable batteries. Due to the expected development of the market and increase of the estimated lifetime of LMT batteries and portable batteries, the methodology to calculate and verify collection targets should evolve in order to better capture the actual volume of waste LMT batteries and waste portable batteries available for collection. Therefore, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect to amend such methodology and to amend the collection targets accordingly. It is crucial that a new available for collection methodology maintains or increases the level of environmental ambition with regard to the collection of waste LMT batteries and waste portable batteries compared to the existing methodology. Based on a first study<sup>40</sup>, it is estimated that a collection target for waste LMT batteries of 51% by 31 December 2028 and 61% by 31 December 2031, calculated with the quantities of LMT batteries made available on the market in a Member State, correspond to a collection target for waste LMT batteries of 79% by 31 December 2028 and 85% by 31 December 2031, calculated with the quantities of LMT batteries available for collection in a Member State. The collection targets for waste portable batteries and waste LMT batteries are to be reviewed. Such review may also address the possibility to introduce two sub-categories of portable battery: rechargeable and non-rechargeable, with separate collection rates. The Commission should prepare a report to underpin these reviews. In order to maximise collection and reduce safety risks, the feasibility and potential benefits of establishing a deposit return system for batteries, in particular for portable batteries of general use should be assessed. National and harmonised Union-wide deposit return systems should be taken into account.***

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<sup>40</sup> ***JRC Publications Repository - "Available for Collection" study on alternative collection targets for waste portable and light means of transport batteries (europa.eu)***



- (82) The collection rate of portable batteries should continue to be calculated on the basis of average annual sales in the preceding years so as to have targets proportionate to the level of battery consumption in a Member State. In order to best reflect changes in the composition of the portable batteries category, as well as in the lifetime and consumption patterns of batteries, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the methodology to calculate and verify the collection rate for portable batteries, *as well as for light means of transport batteries.*
- (82a) The obligation on the Member States to adopt measures for the achievement of waste portable batteries and waste LMT batteries collection targets by producers and, where appointed, producer responsibility organisations, reflects the general principle that Member States are to ensure the effectiveness of Union law, including the obligation on producers and producer responsibility organisations to achieve the collection targets in question.*
- (83) All *SLI batteries*, industrial *batteries* and electric vehicles batteries should be collected and for that purpose the producers of such batteries should be required to accept and take back free of charge, all waste *SLI batteries, waste industrial batteries and waste* electric vehicles batteries from end-users. Detailed reporting obligations should be established for all actors involved in the collection of waste *SLI batteries, waste industrial batteries and waste* electric vehicles batteries.

- (84) In view of the waste hierarchy as established by Article 4 of Directive 2008/98/EC which prioritises prevention, preparing for *re-use* and recycling and in line with Article 11(4) of Directive 2008/98/EC and Article 5(3)(f) of Directive 1999/31/EC<sup>41</sup>, batteries collected should not be *disposed of or be subject to an energy recovery operation*.
- (85) Any permitted facility carrying out treatment and recycling operations of batteries should comply with minimum requirements to prevent negative environmental and human health impacts and to allow a high degree of recovery of materials contained in batteries. Directive 2010/75/EU of the European Parliament and of the Council<sup>42</sup> regulates a number of industrial activities involved in the treatment and recycling of waste batteries, for which it ensures specific permitting requirements and controls reflecting best available techniques. Where industrial activities relating to the treatment and recycling of batteries are not covered by Directive 2010/75/EC, operators should in any case be obliged to apply best available techniques, as defined in Article 3(10) of that Directive, and the specific requirements laid down in the present Regulation. The requirements regarding the treatment and recycling of batteries should, where relevant, be adapted by the Commission in the light of scientific and technical progress and emerging new technologies in waste management. Therefore, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending those requirements.

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<sup>41</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p.1).

<sup>42</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

(86) Targets for the efficiency of the recycling processes and material recovery targets should be established to ensure the production of recovered materials of quality for the battery industry, while at the same time ensuring clear and common rules for recyclers and avoiding distortions of competition or other impediments to the smooth functioning of the internal market for secondary raw materials from waste batteries. Recycling efficiencies, as a measure of the total amount of materials recovered, should be established for lead-acid batteries, nickel-cadmium batteries and lithium batteries and targets should also be set out for the levels of recovered cobalt, lead, lithium and nickel materials to attain a high level of material recovery throughout the Union. The rules on the calculation and reporting on recycling efficiencies laid down in Commission Regulation (EU) No 493/2012<sup>43</sup> should continue to apply. In order to ensure uniform conditions for the calculation and verification of recycling efficiencies and recovery of materials in the recycling processes for batteries, implementing powers should be conferred on the Commission to the establishment of such rules. The Commission should also review Commission Regulation (EU) No 493/2012 to properly reflect technological developments and changes occurred in industrial recovery processes, to extend their scope to cover existing and new targets, and to provide tools for the characterization of intermediate products. Treatment and recycling facilities should be encouraged to introduce certified environmental management schemes in accordance with Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> Commission Regulation (EU) No 493/2012 of 11 June 2012 laying down, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators (OJ L 151, 12.6.2012, p. 9).

<sup>44</sup> Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1)

(87) It should only be possible to carry out treatment ■ outside the Member State concerned or outside the Union, where the shipment of waste batteries is in compliance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council<sup>45</sup> and Commission Regulation (EC) No 1418/2007<sup>46</sup> and where the treatment ■ activities meet the requirements applicable for this type of wastes, according to their classification in Commission Decision 2000/532/EC , as amended.<sup>47</sup> That Decision, as amended, should be revised to reflect all battery chemistries, ***namely including codes for lithium-ion waste batteries, in order to enable proper sorting and reporting of lithium-ion waste batteries. This regulation is without prejudice to the possible classification of waste batteries as hazardous waste under Directive 2008/98/EC.*** Where such treatment ■ takes *place* outside the Union, in order to be counted towards the recycling efficiencies and targets, the ***waste management*** operator for whose account it is carried out should be obliged to report on it to the competent authority of the respective Member State and to prove that the treatment is carried out in conditions equivalent to those under this Regulation ***and relevant environmental and human health protection requirements in other Union legislation.*** In order to lay down what are the requirements for such treatment to be considered equivalent, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of laying down detailed rules containing criteria for the assessment of equivalent conditions.

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<sup>45</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

<sup>46</sup> Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply (OJ L 316, 4.12.2007, p. 6).

<sup>47</sup> 2000/532/EC: Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, OJ L 226, 6.9.2000, p. 3.

*(87a) In the event waste batteries are exported from the Union for preparation for re-use, preparation for repurposing, or recycling, Member States' competent authorities should make effective use of the powers provided for in Article 50(4) of Regulation (EC) No 1013/2006 to require documentary evidence to ascertain compliance with the requirements set out in this Regulation.*

(88) Industrial **batteries** and electric vehicle batteries that are no longer fit for the initial purpose for which they were manufactured may be used for a different purpose as stationary energy storage batteries. A market for the second life of used industrial **batteries** and electric vehicle batteries is emerging and in order to support the practical application of the waste hierarchy, specific rules should thus be defined to allow responsible repurposing of used batteries while taking into account the precautionary principle and ensuring safety of use for **end-users**. Any such used battery should undergo an assessment of its state of health and available capacity to ascertain its suitability for use for any other than its original purpose. **Batteries that are found to be suitable for use other than for their original purpose should ideally be repurposed.** In order to ensure uniform conditions for the implementation of provisions related to the **requirements that waste industrial batteries or waste electric vehicle batteries should fulfil to cease to be waste**, implementing powers should be conferred on the Commission.

- (89) Producers and distributors should be actively involved in providing information to end - users that batteries should be collected separately, that collection schemes are available and that end -users have an important role in ensuring an environmentally optimal management of waste batteries. The disclosure of information to all *end-users* as well as reporting on batteries should make use of modern information technologies. The information should be provided either by classical means, such as outdoors, posters and social media campaigns, or by more innovative means, such as electronic access to websites provided by QR codes affixed to the battery. ***Such information should be accessible for persons with disabilities in accordance with the requirements laid down in Directive (EU) 2019/882 of the European Parliament and of the Council (1).***
- (90) To enable the verification of compliance with and the effectiveness of the obligations regarding the collection and treatment of batteries, it is necessary that the respective operators report back to the competent authorities. Producers of batteries and other waste management operators collecting batteries should report for each calendar year, where applicable, the data on batteries sold and waste batteries collected. Regarding treatment and recycling, reporting obligations should be incumbent upon the waste management operators and recyclers respectively.

- (91) For each calendar year, Member States should provide the Commission with information on the amount of batteries supplied within their territory and the amount of waste batteries collected, by *category* and chemistry. With regard to portable batteries, data on batteries and waste batteries from light means of transport should be reported separately in view of the need to gather data to allow for adapting the collection target, considering the market share of such batteries and their specific purpose and characteristics. Such information should be provided electronically and be accompanied by a quality check report. In order to ensure uniform conditions for the reporting of that data and information to the Commission, as well as for the verification methods, implementing powers should be conferred on the Commission.
- (92) For each calendar year, Member States should report to the Commission the **■** recycling efficiencies and the levels of recovered materials achieved taking into account all the individual steps of the recycling process and the output fractions.

(93) In order to enhance transparency along supply and value chains for all stakeholders, it is necessary to provide for **a battery passport** that maximises the exchange of information, enabling tracking and tracing of batteries, provides information about the carbon intensity of their manufacturing processes as well as the origin of the materials ***used and whether renewable material such as graphite produced from lignin is*** used, their composition, including raw materials and hazardous chemicals, repair, repurposing and dismantling operations and possibilities, and the treatment, recycling and recovery processes to which the battery could be subject to at the end of their life. ***The battery passport should provide the public with information about batteries placed on the market and their sustainability requirements. It should provide remanufacturers, second-life operators and recyclers with up-to-date information for their handling of batteries and specific actors with tailored information such as on the state of health of batteries. It may support market surveillance authorities in carrying out their tasks under this Regulation, but does not replace or modify the responsibilities of the market surveillance authorities, who should, in line with Regulation (EU) 2019/1020, carry out checks of the information contained in battery passports.***



- (93a) *Certain information in the battery passport should not be public as they concern sensitive commercial information that is only needed by a limited number of persons with a legitimate interest. This applies to dismantling information, including safety, and detailed composition which is essential for repairers, remanufacturers, second-life operators and recyclers. It also applies to information concerning individual batteries, which is essential to those who have purchased the battery or parties acting on their behalf for the purpose of making the battery available to independent energy aggregators or energy market participants, evaluating the residual value or remaining lifetime for further use, and facilitating the preparing for re-use, preparing for repurpose, or repurposing or remanufacturing of the battery. Results of test reports should only be accessible to notified bodies, market surveillance authorities and the Commission.*
- (94) *The battery passport should allow economic operators to gather and reuse in a more efficient way the information and data on individual batteries placed on the market and to make better informed choices in their planning activities. Once it is placed on the market it may in certain cases be more practical for another legal person to update information in the passport, such as a vehicle manufacturer. The economic operator that places the battery on the market should therefore be allowed to authorise in written form another operator to act on its behalf. The responsibility of compliance with the provisions for the battery passport should lie with the economic operator that places the battery on the market. In order to ensure uniform conditions for the implementation of the battery passport, implementing powers should be conferred on the Commission.*

*(94a) To ensure that the battery passport is flexible, agile and market-driven and evolving in line with business models, markets and innovation, it should be based on a decentralised data system, set up and maintained by economic operators. To ensure the effective roll-out of the battery passport, technical design, data requirements and operation of the battery passport should adhere to a set of essential technical requirements. Such requirements should be developed hand-in-hand with those for digital product passports required by other Union legislation concerning eco-design for sustainable products. Technical specifications, for which the European Commission's Connecting Europe Facility principles for the eDelivery Network should be considered, should be established to ensure the effective implementation of those essential requirements, either in the form of harmonised standard referenced in the Official Journal or, as a fall-back option, common specification adopted by the Commission. The technical design should ensure that the battery passport carries data in a secure way, respecting privacy rules.*

(95) Regulation (EU) 2019/1020 *lays down the general* rules on market surveillance and control of products *placed on the Union market or* entering the Union market *from third countries*. In order to ensure that *batteries* benefiting from the free movement of goods fulfil requirements providing a high level of protection of public interests such as human health, safety, protection of property and of the environment, *and to ensure full enforceability of the obligations in particular in matters relating to the due diligence policies under this Regulation*, that Regulation should *also* apply to batteries *and economic operators concerned* by this Regulation. Therefore, *Annex I of* Regulation (EU) 2019/1020 should be amended accordingly.

- (95a) Regulation (EU) 2019/1020 requires market surveillance authorities to perform appropriate checks on the characteristics of products on an adequate scale. It empowers the Commission to determine the uniform conditions of checks, criteria for determination of the frequency of checks and amount of samples to be checked in relation to certain products or categories of products. This provision also applies to batteries covered by this Regulation when the conditions specified in Regulation (EU) 2019/1020 are met.*
- (95b) Regulation (EU) 2019/1020 introduced new instruments to improve compliance and market surveillance, which are also relevant to batteries. It provides for the Commission to designate a public testing facility of Member State as Union testing facility for specific categories of products or for specific risks related to a category of products. The Commission should include batteries as covered by this Regulation in its next call for expression of interest for the designation of the Union testing facilities pursuant to Commission implementing regulation (EU) 2022/1267 of 20 July 2022 specifying the procedures for the designation of Union testing facilities for the purposes of market surveillance and verification of product compliance in accordance with Regulation (EU) 2019/1020 of the European Parliament and of the Council [OJ L 192, 21.7.2022, p. 21.]. Regulation (EU) 2019/1020 further provides that market surveillance authorities might carry out joint activities with organisations representing economic operators or end users, with a view to promoting compliance, identifying non-compliance, raising awareness and providing guidance in relation to the requirements of this Regulation. In that context, Member States or market surveillance authorities might explore setting up battery competence centres to this end. The members of the administrative cooperation (ADCO) group for market surveillance of batteries should to inform each other of such activities and promote best practices.*

- (96) Batteries should be placed on the market only if they do not present a risk to human health, safety, property or the environment when properly stored and used for their intended purpose, or under conditions of use which can be reasonably foreseen, that is when such use could result from lawful and readily predictable human behaviour.
- (97) A procedure should exist under which interested parties are informed of measures intended to be taken with regard to batteries presenting a risk to human health, safety, property or the environment. It should also allow market surveillance authorities in the Member States, in cooperation with the relevant economic operators, to act at an early stage in respect of such batteries. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers to adopt acts should be conferred on the Commission in order to determine whether national measures in respect of non-compliant batteries are justified or not.
- (98) The market surveillance authorities should have the right to require economic operators to take corrective actions on the basis of findings that either the battery is not compliant with the requirements of this Regulation or the economic operator infringes the rules on the placing or making available on the market of a battery, or on sustainability, safety, **labelling and information** or on supply chain due diligence.

- (99) Public procurement constitutes an important sector with regard to reducing the impacts on the environment of human activities and to stimulate market transformation towards more sustainable products. Contracting authorities, as defined in Directive 2014/24/EU<sup>48</sup> of the European Parliament and of the Council and Directive 2014/25/EU of the European Parliament and of the Council<sup>49</sup>, and contracting entities as defined in Directive 2014/25/EU should take account of the environmental impacts when procuring batteries or products containing batteries ***and ensure effective compliance with social and environmental requirements by the economic operators***, in order to promote and stimulate the market for clean and energy-efficient mobility and energy-storage and thus ***contributing*** to the environment, climate and energy policy objectives of the Union.
- (100) In order to establish the equivalence of due diligence schemes that have been developed by governments, industry associations and groupings of interested organisation, implementing powers should be conferred on the Commission. In order to ensure that the list of raw materials and the associated social and environmental risks are kept up-to-date, as well the consistency with the Conflict Minerals Regulation and the OECD Due Diligence in terms of obligations for economic operators, implementing powers should be conferred on the Commission.

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<sup>48</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65)

<sup>49</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243)

- (101) In order to ensure uniform conditions for the implementation of the Commission’s recognition of supply chain due diligence schemes, implementing powers should be conferred on the Commission.
- (102) When adopting delegated acts under this Regulation, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>50</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States’ experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (103) The implementing powers that are conferred on the Commission by this Regulation and that do not relate to the determination whether measures taken by Member States in respect of non-compliant batteries are justified or not should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>51</sup>.
- (104) The advisory procedure should be used for the adoption of an implementing act in situations where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, in order to request the notifying authority to take the necessary corrective action, including withdrawal of the notification if necessary.

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<sup>50</sup> OJ L 123, 12.5.2016, p.1

<sup>51</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

- (105) The Commission should adopt immediately applicable implementing acts determining whether a national measure taken in respect of a compliant battery that presents a risk is justified or not where, in duly justified cases relating to the protection of human health, safety, property or the environment, imperative grounds of urgency so require.
- (106) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that those rules are enforced. The penalties provided for should be effective, proportionate and dissuasive. *When imposing penalties, due regard should be given to the nature, gravity, scope, intentional nature and repetition of infringement and the level of cooperation of the natural or legal person held responsible with the competent authority. The imposition of penalties should comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union.*
- (107) In view of the need to ensure a high level of environmental protection and the need to take into account new developments based on scientific facts, the Commission should submit to the European Parliament and to the Council a report on the implementation of this Regulation and its impact on the environment and the functioning of the internal market. The Commission should in its report include an evaluation of the sustainability, safety, labelling and information criteria provisions, the waste batteries management measures and the supply chain due diligence requirements. Where appropriate, the report should be accompanied by a proposal to amend relevant provisions of this Regulation.

- (108) It is necessary to provide for sufficient time for economic operators to comply with their obligations under this Regulation, and for Member States to set up the administrative infrastructure necessary for its application. The application of this Regulation should therefore also be deferred to a date where those preparations can reasonably be finalised.
- (109) In order to allow Member States to adapt the register of producers set up under Directive 2006/66/EC and to take the necessary administrative measures regarding the organisation of the authorisation procedures by the competent authorities, while keeping continuity for economic operators, Directive 2006/66/EC should be repealed as of **24 months after entry into force of the Regulation**. Obligations under that Directive related to monitoring and reporting the collection rate of portable batteries **should remain in force until 31 December 2023**, and the **related obligations for the transmission of data to the Commission should remain in force until 30 June 2025, and obligations under that Directive related to monitoring and reporting the recycling efficiencies of recycling processes should remain in force until 31 December 2025**, and the related obligations for the transmission of data to the Commission **should remain in force until 30 June 2027**, in order to ensure continuity until new calculation rules and reporting formats are adopted by the Commission under this Regulation.



***(109a) It is important that in the implementation of this Regulation, environmental, social and economic impacts are considered. Moreover, in order to ensure that there is a level playing field, it is important that in the implementation of this regulation all relevant available technologies are equally taken into consideration, provided that those technologies allow for full compliance by batteries with any relevant requirement set out in this Regulation. Furthermore, no excessive administrative burden should be imposed on economic operators, in particular on SMEs.***

(110) Since the objective of this Regulation, namely to guarantee the functioning of the internal market ***and to ensure*** that batteries placed on the market ***as well as the operations linked to waste batteries*** fulfil the requirements providing for a high level of protection of human health, safety, property and the environment, cannot be sufficiently achieved by the Member States but can rather, by reason of the need for harmonisation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## Chapter I

### General provisions

#### Article 1

##### Subject matter and scope

1. This Regulation establishes requirements on sustainability, safety, labelling and information to allow the placing on the market or putting into service of batteries, as well as *minimum* requirements for the *extended producer responsibility, collection and treatment* of waste batteries *and reporting*.
- 1a. This Regulation lays down the battery due diligence obligations of economic operators placing batteries on the market or putting them into service and requirements for green public procurement when procuring batteries or products in which batteries are incorporated.*

2. This Regulation shall apply to all *categories of* batteries, namely portable batteries, *SLI batteries, light means of transport* batteries, electric vehicle batteries and industrial batteries, regardless of their shape, volume, weight, design, material composition, *type, chemistry*, use or purpose. It shall also apply to batteries *designed to be or* incorporated *into or added to products. For the purpose of chapter II, when batteries placed on the market can be considered to fall under more than one category, the strictest requirements provided thereof shall apply.*
- 2a. *In cases where battery cells or battery modules are made available for end use, without any further incorporation or assembly into larger battery packs or batteries, they shall be considered to have been placed on the market as batteries for the purposes of this regulation, and the requirements for the most similar battery category shall be applicable. In cases where it can be considered that such battery cells or battery modules fall under more than one battery category, the strictest requirements shall apply.*

3. This Regulation shall not apply to batteries *designed to be or incorporated into*:
- (a) equipment connected with the protection of Member States' essential security interests, arms, munitions and war material, with the exclusion of products that are not intended for specifically military purposes; and
  - (b) equipment designed to be sent into space.
- 3a. *Chapters III and VIII of this Regulation shall not apply to equipment specifically designed for the safety of nuclear installations, as defined in Article 3 of Council Directive 2009/71/Euratom<sup>52</sup>.*

#### *Article 1a*

#### *Objectives*

*The objectives of this Regulation are to contribute to the efficient functioning of the internal market, also while preventing and reducing the adverse impacts of batteries on the environment, and to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste batteries.*

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<sup>52</sup> *Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p.18).*

## Article 2

### Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'battery' means any ***device delivering*** electrical energy generated by direct conversion of chemical energy, ***having internal or external storage***, and consisting of one or more non-rechargeable or rechargeable battery cells, ***modules*** or of ***packs*** of them, ***including a battery that has been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing***;
- (1a) ***'battery pack' means any set of battery cells or modules that are connected together or encapsulated within an outer casing, so as to form a complete unit that the end-user is not intended to split up or open***;
- (1b) ***'battery module' means a set of battery cells that are connected together or encapsulated within an outer casing to protect the cells against external impact, and which is meant to be used either stand-alone or in combination with other modules.***
- (2) 'battery cell' means the basic functional unit in a battery constituted by electrodes, electrolyte, container, terminals and, if applicable, separators, and containing the active materials the reaction of which generates electrical energy;
- (3) 'active materials' means material which reacts chemically to produce electric energy when the battery cell discharges ***or to store electric energy when the battery is being charged***;

- (4) ‘non-rechargeable battery’ means a battery that is not designed to be electrically recharged;
- (5) ‘rechargeable battery’ means a battery that is designed to be electrically recharged;
- (6) ‘battery with *external* storage’ means a battery *designed to have the energy stored exclusively in one or more* attached external devices ■ ;
- (7) ‘portable battery’ means any battery that:
- is sealed;
  - weighs below *or equal to* 5 kg;
  - is not designed *specifically* for industrial *uses* and
  - is neither an electric vehicle battery, *nor a light means of transport battery, nor an SLI* battery;
- (8) ‘portable batteries of general use’ means *rechargeable and non-rechargeable* portable batteries *specifically produced to be interoperable and* with the following common formats: 4,5 Volts (3R12), *button cell*, D, C, AA, AAA, AAAA, A23, 9 Volts (PP3);
- (9) ‘light means of transport *battery*’ or ‘*LMT battery*’ means *any battery that is sealed and weighs below or equal to 25 kg, designed to provide electric power for the traction to wheeled vehicles* that can be powered by the electric motor alone or by a combination of motor and human power *including type-approved vehicle of category L in the meaning of Regulation (EU) No 168/2013, and that is not an electric vehicle battery*;

- (10) ‘**SLI battery**’ means any battery *designed to supply electric power for starter, lighting, or ignition and may also be used for auxiliary or backup purposes in vehicles, other means of transport or machinery*;
- (11) ‘**industrial battery**’ means any battery:
- designed *specifically* for industrial uses, *or*
  - *intended for industrial uses after being subject to preparing for repurpose or repurposing, or*
  - any other battery *with a weight above 5 kg that is not a LMT battery, an electric vehicle battery or a SLI battery*
- (12) ‘**electric vehicle battery**’ *or ‘EV battery’* means any battery specifically *designed to provide electric power for the traction to hybrid or electric vehicles of L category as provided for in Regulation (EU) No 168/2013, and with a weight above 25 kg, or designed to provide electric power for the traction to hybrid or electric vehicles of M, N or O categories as provided for in Regulation (EU) 2018/858*;
- (13) ‘**stationary battery energy storage system**’ means a ■ industrial battery with internal storage specifically designed to store and deliver electric energy *from and into the grid or store and deliver electric energy to end-user*, regardless of where and by whom this battery is being used;

- (14) ‘placing on the market’ means ***the first*** making available ***of*** a battery **■** on the Union market;
- (15) ‘making available on the market’ means any supply of a battery for distribution or use on the ***Union*** market in the course of a commercial activity, whether in return for payment or free of charge;
- (16) ‘putting into service’ means the first use, for its intended purpose, in the Union, of a battery, ***without having been placed on the market previously***;
- (17) ‘battery model’ ***means a version of a battery of which all units share the same technical characteristics relevant for sustainability and safety requirements and labelling, marking and information requirements pursuant to this Regulation and the same model identifier***;
- (17a) ***‘battery presenting a risk’ means a battery having the potential to affect adversely health or safety of persons, property or the environment to a degree which goes beyond that considered reasonable and acceptable in relation to its intended purpose or under the normal or reasonably foreseeable conditions of use of the battery concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements***;



- (18) ‘carbon footprint’ means the sum of greenhouse gas (GHG) emissions and GHG removals in a product system, expressed as carbon dioxide (CO<sub>2</sub>) equivalents and based on a Product Environmental Footprint (PEF) study using the single impact category of climate change;
- (19) ‘economic operator’ means the manufacturer, the authorised representative, the importer, the distributor or the fulfilment service provider *or any other natural or legal person* who is subject to obligations in relation to manufacturing batteries, *preparing batteries for reuse, preparing batteries for repurpose, repurposing, or remanufacturing, of batteries*, making them available or placing them on the market, *including on-line placing on the market*, or putting them into service in accordance with *this* Regulation;
- (20) ‘independent operator’ means a natural or legal person ■ who is independent from the manufacturer and the producer and is directly or indirectly involved in the repair, maintenance or repurposing of batteries, and include waste management operators, repairers, manufacturers or distributors of repair equipment, tools or spare parts, as well as publishers of technical information, operators offering inspection and testing services, operators offering training for installers, manufacturers and repairers of equipment for alternative-fuel vehicles;
- (21) ‘QR code’ means a *machine-readable* matrix *code* that links to information *as required by this Regulation*;

- (22) ‘battery management system’ means an electronic device that controls or manages the electric and thermal functions of the battery *in order to ensure the battery’s safety, performance and service life*, that manages and stores the data on the parameters for determining the state of health and expected lifetime of batteries laid down in Annex VII and that communicates with the vehicle, *light mean of transport* or appliance in which the battery is incorporated, *or with a public or private charging infrastructure*;
- (23) ‘appliance’ means any electrical or electronic equipment, as defined by Directive 2012/19/EU, which is fully or partly powered by a battery or is capable of being so;
- (24) ‘state of charge’ means the available *energy* in a battery expressed as a percentage of rated capacity *as declared by the manufacturer*;
- (25) ‘state of health’ means a measure of the general condition of a rechargeable battery and its ability to deliver the specified performance compared with its initial condition;
- (25a) ‘preparing for repurpose’ means any operation, by which parts of or a complete waste battery is prepared so that it can be used for a different purpose or application than the one that it was originally designed for;*
- (26) ‘repurposing’ means any operation that results in parts or the complete battery *that is not a waste battery*, being used for a different purpose or application than the one that the battery was originally designed for;

- (26a) *‘remanufacturing’ means any technical operation on a used battery that includes the disassembly and evaluation of all its battery modules and cells and the use of a certain amount of battery cells and modules, new, used or recovered from waste, or other battery components, to restore the battery capacity to at least 90% of the original rated battery capacity, and where the state of health of all individual battery cells is homogeneous, not differing more than 3% from one another, and results in the battery being used for the same purpose or application than the one for which the battery was originally designed;*
- (27) ‘manufacturer’ means any natural or legal person who manufactures a battery or has a battery designed or manufactured, and markets that battery under its own name or trademark *or puts it into service for its own purposes;*
- (28) ‘technical specification’ means a document that prescribes technical requirements to be fulfilled by a product, process or service;
- (29) ‘harmonised standard’ means a standard as defined in Article 2(1)(c) of Regulation (EU) No 1025/2012;
- (30) ‘CE marking’ means a marking by which the manufacturer indicates that the battery is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing;
- (31) ‘accreditation’ means accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008;

- (32) ‘national accreditation body’ *means* a national accreditation body as defined in Article 2(11) of Regulation (EC) No 765/2008;
- (33) ‘conformity assessment’ means the process demonstrating whether the sustainability, safety, *labelling, information or due diligence* requirements of this Regulation ■ have been fulfilled;
- (34) ‘conformity assessment body’ means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (35) ‘notified body’ means a conformity assessment body notified in accordance with *Chapter V* of this Regulation;
- (36) *'battery due diligence'* means the obligations of the economic operator ■ , in relation to its management system, risk management, third party verifications *and surveillance* by notified bodies and disclosure of information with a view to identifying, *preventing* and addressing actual and potential *social and environmental* risks linked to the sourcing, processing and trading of the raw materials *and secondary raw materials* required for battery manufacturing *including suppliers in the chain and their subsidiaries or subcontractors that perform such activities*;

- (36aa) *‘subsidiary’ means a legal person through which the activity of a ‘controlled undertaking’ as defined in Article 2(1), point (f), of Directive 2004/109/EC of the European Parliament and of the Council<sup>53</sup> is exercised;*
- (36ab) *‘parent company’ means a company which controls one or more subsidiaries within the meaning of point (36aa);*
- (36b) *‘conflict-affected and high-risk areas’ means areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses;*
- (37) *‘producer’ means any manufacturer, importer or distributor or other natural or legal person who, irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU, alternatively:*
- (i) *is established in a Member State and manufactures batteries under its own name or trademark, or has batteries designed or manufactured and supplies them for the first time under its own name or trademark, including those incorporated in appliances, light means of transport or vehicles, within the territory of that Member State;*

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<sup>53</sup> *Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).*

- (ii) is established in a Member State and resells within the territory of that Member State, under its own name or trademark, batteries, including those incorporated in appliances, light means of transport or vehicles, manufactured by others. A reseller is not regarded as the ‘producer’ if the brand of the manufacturer appears on the batteries, as provided for in point (i);*
  - (iii) is established in a Member State and supplies for the first time in this Member State on a professional basis, batteries, including those incorporated in appliances, light means of transport or vehicles, from a third country or from another Member State;*
  - (iv) sells batteries, including those incorporated in appliances, light means of transport or vehicles, by means of distance communication directly to end-users, that are either private households or other than private households, in a Member State, and is established in another Member State or in a third country.*
- (37a) ‘authorised representative for the EPR’ means a legal or natural person established in Member State where the producer places batteries on the market and is different from the Member State where the producer is established, and is appointed by the producer in accordance with third subparagraph of Article 8a(5) of Directive 2008/98/EU for fulfilling the obligations of that producer under Chapter VII of this Regulation;*

- (38) ‘producer responsibility organisation’ means a legal entity that financially or **financially** **and** operationally organises the fulfilment of extended producer responsibility obligations on behalf of several producers;
- (39) ‘waste battery’ means any battery which is waste within the meaning of Article 3(1) of Directive 2008/98/EC;
- (39a) ***Battery manufacturing waste means the materials or objects rejected during the battery manufacturing process, which cannot be re-used as an integral part in the same process and need to be recycled.***

█

(41) ‘hazardous substance’ means *a substance classified as hazardous as a consequence of fulfilling the criteria laid down in Parts 2 to 5 of the* Annex I of Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>54</sup>

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(42) ‘treatment’ means any activity carried out on waste batteries after they have been handed over to a facility for sorting, *preparing for re-use, preparing for repurpose*, preparation for *recycling, or* recycling;

(42a) ‘*preparation for recycling*’ means *treatment of waste batteries prior to any recycling process, which shall, inter alia, include storage, handling, dismantling of battery packs or separation of fractions that are not part of the battery itself;*

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<sup>54</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1)



- (43) ‘voluntary collection points’ means any non-profit, commercial or other economic undertaking or public body involved on their own initiative in the separate collection of waste portable batteries, by collecting the waste portable batteries it generates or which are generated by other end-users before they are ***handed over to producers, to producer responsibility organisations or to*** waste management operators for subsequent treatment;
- (44) ‘waste management operator’ means any natural or legal person dealing on a professional basis with the separate collection **■** or treatment of waste batteries;
- (45) ‘permitted facility’ means any facility that is permitted in accordance with Directive 2008/98/EC to carry out the treatment **■** of waste batteries;
- (46) ‘recycler’ means any natural or legal person **■** who carries out recycling **■** in a permitted facility;
- (47) ‘lifetime’ of a battery means the period of time that starts when the battery is ***manufactured***, and ends when the battery becomes waste;

**■**

**■**

- (50) ‘recycling efficiency’ of a recycling process means the ratio obtained by dividing the mass of output fractions accounting for recycling by the mass of the waste batteries input fraction, expressed as a percentage;
- (51) ‘Union harmonisation legislation’ means any Union legislation harmonising the conditions for the marketing of products;
- (52) ‘national authority’ means an approval authority or any other authority involved in and responsible for market surveillance **■** in a Member State in respect of batteries;
- (53) ‘authorised representative’ means any natural or legal person established in the Union who has received a written mandate from a manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer’s obligations under the requirements of ***Chapter IV and VI of this Regulation***;
- (54) ‘importer’ means any natural or legal person established within the Union who places a battery ***on the market*** from a third country;
- (55) ‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a battery available on the market;
- (55a)** ***‘unique identifier’ means a unique string of characters for the identification of batteries that also enables a web link to the battery passport;***

**■**

The definitions of ‘waste’, ‘waste holder’, ‘waste management’, ‘*prevention*’, ‘collection’, ‘separate collection’, ‘*extended producer responsibility scheme*’, ‘*reuse*’, ‘preparing for re-use’, ‘*material* recovery’ and ‘recycling’ laid down in Article 3 of Directive 2008/98/EC shall apply.

The definitions of **■**, ‘market surveillance’, ‘market surveillance authority’, ‘fulfilment service provider’, ‘corrective action’, ‘*end-user*’, ‘recall’ and ‘withdrawal’, *as well as of ‘risk’ in relation to requirements of Chapters I, IV, VI, VII, IX and Annex V, Annex VIII and Annex XIII*, laid down in Article 3 of Regulation (EU) 2019/1020 shall apply.

The definitions of ‘independent aggregator’, ‘*market participant*’ and ‘*energy storage*’ laid down in Article 2 of Directive (EU) 2019/944 shall apply.

*The definition of ‘online platform’ laid down in Article 3 of Regulation (EU) 2022/2065 shall apply.*

## Article 3

### Free movement

1. Member States shall not, for reasons relating to sustainability, safety, labelling and information requirements of **■** batteries covered by this Regulation, prohibit, restrict or impede the making available on the market or the putting into service of batteries that comply with this Regulation.
2. At trade fairs, exhibitions, demonstrations or similar events, Member States shall not prevent the showing of batteries, which do not comply with this Regulation, provided that a visible sign clearly indicates that such batteries do not comply with this Regulation and that they *cannot be made available on the market or put into service* until they have been brought into conformity. *During demonstrations, the relevant economic operator shall take adequate measures to ensure the safety of persons.*

## Article 4

### Sustainability, safety, labelling and information requirements for batteries

1. Batteries shall only be placed on the market or put into service if they meet:
  - (a) the sustainability and safety requirements set out in *Articles 6 to 10 and 12; and*
  - (b) the labelling and information requirements set out *in* Chapter III.
2. For any aspects not covered by Chapters II and III, batteries *referred to in paragraphs 1* shall not present a risk to human health, to safety *of persons*, to property or to the environment.



## Chapter II

### Sustainability and safety requirements

#### Article 6

##### Restrictions of ■ substances

1. In addition to the restrictions set out in Annex XVII of Regulation (EC) No 1907/2006 **and in Annex II of Directive 2000/53/EC**, batteries shall not contain ■ substances for which Annex I contains a restriction unless they comply with the conditions of that restriction.
2. ***In case of*** an unacceptable risk to human health or the environment, arising from the use of a substance in the manufacture of batteries, or from ***the presence of*** a substance ■ in the batteries when they are placed on the market, or during their subsequent life cycle stages, including ***during repurposing or during the treatment of waste batteries, that is not adequately controlled and*** needs to be addressed on a Union-wide basis, the Commission shall adopt a delegated act in accordance with the procedure referred to in Article 73 to amend the restrictions in Annex I, pursuant to the procedure laid down in Article 71.

■

4. Restrictions adopted pursuant to paragraph 2 shall not apply to the use of a substance in scientific research and development (of batteries) as defined in Article 3(23) of Regulation (EC) No 1907/2006.
5. If a restriction adopted pursuant to paragraph 2 shall not apply to product and process oriented research and development, as defined in Article 3(22) of Regulation (EC) No 1907/2006, this exemption, as well as the maximum quantity of the substance exempted, shall be specified in Annex I.
  - 5a. ***By 31 December 2027, the Commission, assisted by the European Chemicals Agency, shall prepare a report on substances of concern, meaning substances having adverse effect on human health or the environment or hampering recycling for safe and high quality secondary raw materials, contained in batteries or used in their manufacturing. The Commission shall submit the report to the European Parliament and to the Council detailing its findings and will consider the appropriate follow-up measures including the adoption of the delegated acts referred to in the second paragraph.***

## Article 7

### Carbon footprint of electric vehicle batteries, *light means of transport* and rechargeable industrial batteries

1. ***For*** rechargeable industrial batteries with **■** a capacity above 2 kWh, ***light means of transport batteries and electric vehicle batteries a carbon footprint declaration shall be drawn up, for each battery model per manufacturing plant,*** in accordance with the delegated act referred to in the second ***subparagraph*** and containing, at least, the following information:
  - (a) administrative information about the ***manufacturer***;
  - (b) information about the battery ***model*** for which the declaration applies;
  - (c) information about the geographic location of the battery manufacturing facility;
  - (d) ***the*** carbon footprint of the battery, calculated as kg of carbon dioxide equivalent ***per one kWh of the total energy provided by the battery over its expected service life***;
  - (e) the carbon footprint of the battery differentiated per life cycle stage as described in point 4 of Annex II;



- (f) *identification number of the EU declaration of conformity of the battery;*
- (g) a web link to get access to a public version of the study supporting the carbon footprint *values referred to in points (d) and (e).*

The carbon footprint declaration **■** shall apply as of:

- (a) *18 months after entry into force of the Regulation or 12 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for electric vehicle batteries;*
- (b) *30 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for rechargeable industrial batteries except those with exclusively external storage.*
- (c) *60 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for LMT batteries;*
- (d) *84 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for rechargeable industrial batteries with external storage;*

*Until it becomes accessible via the QR code referred to in Article 13(5), the carbon footprint declaration shall accompany the battery.*

The Commission shall, no later than *6 months after entry into force of the Regulation for electric vehicle batteries and 18 months after entry into force of the Regulation for rechargeable industrial batteries, except those with external storage, 42 months after entry into force of the Regulation for LMT batteries and 66 months for industrial batteries with external storage*, adopt:

- (a) a delegated act in accordance with Article 73 to supplement this Regulation by establishing the methodology *for calculation and verification of the* carbon footprint of the battery referred to in point (d), in accordance with the essential elements set out in Annex II;
- (b) an implementing act establishing the format for the carbon footprint declaration referred to in the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).

■

2. **Rechargeable industrial batteries with a capacity above 2 kWh, *LMT batteries and electric vehicle batteries*** shall bear a conspicuous, clearly legible and indelible label indicating the carbon footprint ***of the battery referred to in point (d) of paragraph 1 and the carbon footprint*** performance class that the ***relevant battery model per manufacturing plant*** corresponds to.

***For batteries referred to in first subparagraph***, the technical documentation ***referred to in Annex VIII*** shall demonstrate that the carbon footprint declared and the related classification into a carbon footprint performance class have been calculated in accordance with the methodology set out in the delegated ***acts*** adopted by the Commission pursuant to the ***point (a) of third subparagraph of paragraph 1 and point (a) of third*** subparagraph.

The carbon footprint performance class requirements in the first subparagraph shall apply as of:

- (a) 36 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for electric vehicle batteries;***
- (b) 48 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for rechargeable industrial batteries except those with exclusively external storage;***

- (c) *78 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for LMT batteries;*
- (d) *102 months after entry into force of the Regulation or 18 months after the entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for rechargeable industrial batteries with external storage.*

The Commission shall, no later than *18 months after entry into force of the Regulation for electric vehicle batteries and 36 months after entry into force of the Regulation for rechargeable industrial batteries except those with exclusively external storage, 60 months after entry into force of the Regulation for LMT batteries and 84 months after entry into force of the regulation for rechargeable industrial batteries with external storage*, adopt:

- (a) a delegated act in accordance with Article 73 to supplement this Regulation by establishing the carbon footprint performance classes referred to in the first subparagraph. In preparing that delegated act, the Commission shall take into account the *conditions* set out in *point 8 of Annex II*;
- (b) an implementing act establishing the formats for the labelling referred to in the first subparagraph and the format for the declaration on the carbon footprint performance class referred to in the second subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).

*The Commission shall, in accordance with the conditions set out in point 8 of Annex II, review the number of performance classes and the thresholds between them every three years and, where appropriate, adopt delegated acts in accordance with Article 73 to amend them in a view of keeping them representative of the market reality and its expected development.*

3. *For rechargeable industrial batteries with █ a capacity above 2 kWh, LMT batteries and electric vehicle batteries, the technical documentation referred to in Annex VIII shall demonstrate that the declared life cycle carbon footprint value for the relevant battery model per manufacturing plant, is below the maximum threshold established in the delegated act adopted by the Commission pursuant to the third subparagraph.*

*This requirement for a maximum life cycle carbon footprint threshold in the first subparagraph shall apply as of:*

- (a) 54 months after entry into force of the Regulation or 18 months after entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for electric vehicle batteries;*

- (b) 66 months after entry into force of the Regulation or 18 months after entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for rechargeable industrial batteries except those with exclusively external storage.*
- (c) 96 months after entry into force of the Regulation or 18 months after entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for LMT batteries;*
- (d) 120 months after entry into force of the Regulation or 18 months after entry into force either of the delegated act or of the implementing act respectively referred to in points (a) and (b) of the third subparagraph, whichever is the latest, for rechargeable industrial batteries with external storage.*

The Commission shall, no later than *36 months after entry into force of the Regulation for electric vehicle batteries and 54 months after entry into force of the Regulation for rechargeable industrial batteries, except those with external storage, 78 months after entry into force of the Regulation for LMT batteries and 102 months after entry into force of the Regulation for industrial batteries with external storage*, adopt a delegated act in accordance with Article 73 to supplement this Regulation by determining the maximum life cycle carbon footprint threshold referred to in the first subparagraph. In preparing that delegated act, the Commission shall take into account the relevant *conditions* set out in *point 9 of Annex II*.

The introduction of a maximum life cycle carbon footprint threshold shall trigger, if necessary, a reclassification of the carbon footprint performance classes of the batteries referred to in paragraph 2.

- 3a. *By 31 December 2030, the Commission shall assess the feasibility of extending the requirements in this article to portable batteries, and the requirement referred to in paragraph 3 to rechargeable industrial batteries with nominal energy below 2kWh. To that end, the Commission shall submit a report to the European Parliament and the Council and consider taking the appropriate measures, including the adoption of legislative proposals.***
- 3b. *The requirements laid down in paragraphs 1, 2 and 3 shall not apply to a battery that has been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing, if the battery had already been placed on the market or put into service before undergoing such operations.***

## Article 8

Recycled content in industrial batteries, electric vehicle batteries and *SLI* batteries

1. From *either 60 months after entry into force of the Regulation or 24 months after the entry into force of the delegated act referred to in the third subparagraph, whichever is later*, industrial batteries, *with a capacity above 2 kWh, except those with exclusively external storage, electric vehicle batteries and SLI batteries* that contain cobalt, lead, lithium or nickel in active materials, shall be accompanied by **■** documentation containing information about the *share of, respectively, cobalt*, lithium or nickel recovered from *battery manufacturing waste or post-consumer waste present in active materials, and share of lead recovered from waste present in the battery, for each battery model per year and per manufacturing plant. The first subparagraph shall apply to light means of transport batteries that contain cobalt, lead, lithium or nickel in active materials from 120 months after entry into force of the Regulation.*

By *36 months after entry into force of the Regulation*, the Commission shall adopt *a delegated act in accordance with Article 73 to supplement this Regulation by establishing* the methodology for the calculation and verification of the *share* of cobalt, **■** lithium or nickel recovered from waste present in active materials, *and share of lead recovered from battery manufacturing waste or post-consumer waste present in battery, in the batteries referred to in the first and second subparagraphs, and the format for the documentation.*



2. From **96 months after entry into force of the Regulation, for industrial batteries with a capacity above 2 kWh, except those with exclusively external storage, electric vehicle and SLI batteries** that contain cobalt, lead, lithium or nickel in active materials, **the technical documentation referred to in Annex VIII shall demonstrate** that those batteries contain the following minimum share of, **respectively, cobalt**, lithium or nickel recovered from **battery manufacturing waste or post-consumer waste** present in active materials, **and share of lead recovered from waste present in the battery, for each battery model per year and per manufacturing plant:**
- (a) **16%** cobalt;
  - (b) **85%** lead;
  - (c) **6%** lithium;
  - (d) **6%** nickel.
3. From **156 months after entry into force of the Regulation, for industrial batteries, with a capacity above 2 kWh, except those with exclusively external storage, electric vehicle batteries, light means of transport batteries and SLI batteries** that contain cobalt, lead, lithium or nickel in active materials, **the technical documentation referred to in Annex VIII shall demonstrate** that those batteries contain the following minimum share of, **respectively, cobalt**, lithium or nickel recovered from **battery manufacturing waste or post-consumer waste** present in active materials, **and share of lead recovered from waste present in the battery, for each battery model per year and per manufacturing plant:**
- (a) **26%** cobalt;
  - (b) **85 %** lead;
  - (c) **12%** lithium;
  - (d) **15%** nickel.

- 3a.** *The requirements laid down in paragraphs 1, 2 and 3 shall not apply to a battery that has been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing, if the battery had already been placed on the market or put into service before undergoing such operations.*
- 4.** *After the entry into force of the delegated act under paragraph 1, and no later than 31 December 2028, the Commission shall assess whether, due to the existing and forecasted availability for 2030 and 2035 of cobalt, lead, lithium or nickel recovered from waste, or lack thereof, and in view of technical and scientific progress, it is appropriate to revise the targets laid down in paragraphs 2 and 3.*  
*Where justified and appropriate on the basis of the assessment made under the previous paragraph, or by other considerable changes in battery technologies impacting the type of materials recovered, the Commission shall be empowered to adopt, by 72 months after entry into force of the Regulation, a delegated act in accordance with Article 73, to amend the targets laid down in paragraphs 2 and 3.*
- 4a.** *Where justified and appropriate due to market developments on battery chemistry impacting the type of materials that can be recovered, the Commission shall be empowered to adopt delegated acts in accordance with Article 73, to amend this Regulation by inserting other materials than cobalt, lead, lithium and nickel, with specific minimum shares of recycled content per specific material in paragraph 2 and 3.*

## Article 9

Performance and durability requirements for portable batteries of general use

1. From *either 60 months after entry into force of the Regulation or 24 months after the entry into force of the delegated act referred to in paragraph 2, whichever is later*, portable batteries of general use, *excluding button cells*, shall meet the *minimum* values for the electrochemical performance and durability parameters set out in Annex III as laid down in the delegated act adopted by the Commission pursuant to paragraph 2.
2. By *48 months after entry into force of the Regulation*, the Commission shall adopt a delegated act in accordance with Article 73 to supplement this Regulation by establishing minimum values for the electrochemical performance and durability parameters laid down in Annex III that portable batteries of general use, *excluding button cells*, shall attain.

The Commission is empowered to adopt delegated acts in accordance with Article 73 to amend the *minimum values or add* electrochemical performance and durability parameters laid down in Annex III in view of technical and scientific progress.

In preparing the delegated act referred to in the first subparagraph, the Commission shall consider the need to reduce the life cycle environmental impact of portable batteries of general use, *including the increase of the resource efficiency of portable batteries* and take into consideration relevant international standards and labelling schemes.

The Commission shall also ensure that the provisions laid down by that delegated act do not have a significant negative impact on the **safety and** functionality of those batteries or the appliances, **light means of transport or vehicles** into which those batteries are incorporated, the affordability and the cost for end-users and the industry's competitiveness. ■

3. By 31 December 2030, the Commission shall assess the feasibility of measures to phase out the use of non-rechargeable portable batteries of general use in view of minimising their environmental impact based on the life cycle assessment methodology **and viable alternatives for end-users**. To that end, the Commission shall submit a report to the European Parliament and to the Council and consider taking the appropriate measures, including the adoption of legislative proposals **for either the phase out or the setting of eco-design requirements**.

#### Article 10

Performance and durability requirements for **LMT batteries**, rechargeable industrial batteries and electric vehicle batteries

1. From 12 months after entry into force of the Regulation, **LMT batteries, rechargeable industrial** batteries with ■ a capacity above 2 kWh, **and electric vehicle batteries** shall be accompanied by a **document** containing values for the electrochemical performance and durability parameters laid down in Part A of Annex IV.

*For batteries referred to in first subparagraph the technical documentation referred to in Annex VIII shall* ■ *contain an explanation of the technical specifications, standards and conditions used to measure, calculate or estimate the values for the electrochemical performance and durability parameters. That explanation shall include, at least, the elements laid down in Part B of Annex IV.*

2. From *either 48 months after entry into force of the Regulation or 18 months after the entry into force of the delegated act referred to in paragraph 3, whichever is later*, rechargeable industrial batteries with ■ a capacity above 2 kWh, *except those with exclusively external storage*, shall meet the minimum values laid down in the delegated act adopted by the Commission pursuant to paragraph 3 for the electrochemical performance and durability parameters set out in Part A of Annex IV.
- 2a. From *either 60 months after entry into force of the Regulation or 18 months after the entry into force of the delegated act referred to in paragraph 3a, whichever is later*, *LMT batteries shall meet the minimum values laid down in the delegated act adopted by the Commission pursuant to paragraph 3a for the electrochemical performance and durability parameters set out in Part A of Annex IV.*

- 2b. *The requirements laid down in paragraphs 1 and 2 shall not apply to a battery that has been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing, where the economic operator placing that battery on the market or putting it into service demonstrates that the battery, before undergoing such operation, has been placed on the market or put into service before the dates on which those obligations become applicable in accordance with those paragraphs.*
3. By *30 months after entry into force of the Regulation*, the Commission shall adopt a delegated act in accordance with Article 73 to supplement this Regulation by establishing minimum values for the electrochemical performance and durability parameters laid down in Part A of Annex IV that rechargeable industrial batteries with *a* capacity above 2 kWh, *except those with exclusively external storage, shall attain.*

*By 42 months after entry into force of the Regulation, the Commission shall adopt a delegated act in accordance with Article 73 to supplement this Regulation by establishing minimum values for the electrochemical performance and durability parameters laid down in Part A of Annex IV that LMT batteries shall attain.*

In preparing the delegated *acts* referred to in the first *and second subparagraphs*, the Commission shall consider the need to reduce the life cycle environmental impact of rechargeable industrial batteries with █ a capacity above 2 kWh, *except of those with exclusively external storage, and of LMT batteries*, and ensure that the requirements laid down therein do not have a significant negative impact on the functionality of those batteries or the appliances *light means of transport or vehicles* into which those batteries are incorporated, its affordability and industry's competitiveness. █

- 3a. *The Commission shall be empowered to adopt delegated acts in accordance with Article 73 to amend the electrochemical performance and durability parameters laid down in Annex IV in view of market development and technical and scientific progress, including in particular related to technical specifications of the informal UNECE Working Group on Electric Vehicles and the Environment.*

#### Article 11

Removability and replaceability of portable batteries *and LMT batteries*

1. *From 42 months after entry into force of the Regulation, any natural or legal person that places on the market products incorporating portable batteries shall ensure that those batteries are readily removable and replaceable by the end-user at any time during the lifetime of the product. The first sentence shall only apply to batteries as a whole, and not to individual cells or other parts included in the batteries.*

*A portable battery shall be considered readily removable by the end-user where it can be removed from a product with the use of commercially available tools, without requiring the use of specialized tools, unless provided free of charge with the product, proprietary tools, thermal energy, or solvents to disassemble.*

*Any natural or legal person that places on the market products incorporating portable batteries shall ensure that those products are accompanied with instructions and safety information on the use, removal and replacement of the batteries. These instructions and safety information shall be made available permanently online on a publicly available website in an easily understandable way for end users.*

*This paragraph shall be without prejudice to any specific provisions ensuring a higher level of protection of the environment and human health relating to the removability and replaceability of portable batteries by end-users laid down in any Union legislative act on electric and electronic equipment as defined in Article 3(a) of Directive 2012/19/EU<sup>55</sup>.*

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<sup>55</sup> *Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (recast) Text with EEA relevance, OJ L 197, 24.7.2012, p. 38–71.*



2. *By way of an exception to paragraph 1, the following products incorporating portable batteries may be designed in such a way as to make the battery removable and replaceable only by independent professionals:*

- (a) appliances specifically designed to operate primarily in an environment that is regularly subject to splashing water, water streams or water immersion and that are intended to be washable or rinseable,*
- (b) professional medical imaging and radiotherapy devices, as defined in Article 2(1) of Regulation of the European Parliament and of the Council (EU) 2017/745<sup>56</sup>, and in-vitro diagnostic medical devices, as defined in Article 2(2) of Regulation [of the European Parliament and of the Council] (EU) 2017/746<sup>57</sup>.*

*The derogation set out in point a) of this paragraph is only applicable where this is required to ensure the safety of the user and the appliance.*

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<sup>56</sup> *Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (Text with EEA relevance.), OJ L 117, 5.5.2017, p. 176–332.*

<sup>57</sup> *Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (Text with EEA relevance.), OJ L 117, 5.5.2017, p. 176–332.*

3. 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 to ensure the safety of the user and the appliance or, for products that collect and supply data as their main function, for data integrity reasons.*

■

■

4. *The Commission is empowered to adopt delegated acts in accordance with Article 73 to amend paragraph 2 by adding further products to be exempted from the removability and replaceability requirements laid down in paragraph 1. The delegated act shall be adopted only on account of technical and market developments, and provided that there are scientifically grounded concerns over the safety of end users removing or replacing the portable battery, or in cases where the removal or the replacement of the battery by end-users risks to be in violation of any product safety requirements provided for by applicable Union legislation.*

5. *From 42 months after entry into force of the Regulation, any natural or legal person that places on the market products incorporating LMT batteries shall ensure that those batteries, as well as individual battery cells included in the battery pack, are readily removable and replaceable by an independent professional at any time during the lifetime of the product.*

*A portable or LMT battery is readily replaceable where, after its removal from an appliance or a light mean of transport, it can be substituted by a similar battery, without affecting the functioning or the performance or safety of that appliance or light mean of transport. Any natural or legal person that places on the market products incorporating portable or LMT batteries shall ensure that batteries shall be available as spare parts of the equipment they power for a minimum of 5 years after placing the last unit of the model on the market, with a reasonable and non-discriminatory price for independent professionals and end users.*

6. *Software shall not be used to affect the replacement of a portable battery or light means of transport battery or of their key components with another compatible battery or key components.*
7. The Commission shall ***publish guidelines*** to facilitate harmonised application of the ***provisions*** set out in ***this Article***.

## Article 12

### Safety of stationary battery energy storage ***system***

1. Stationary battery energy storage systems ***placed on the market or put into service shall be safe*** during their normal operation and use **■** .

**1a. By 12 months after entry into force of the Regulation, the technical documentation referred to in Annex VIII shall:**

- (a) demonstrate that the batteries referred to in paragraph 1 are compliant with the requirements in accordance with paragraph 1 and include evidence that they have been successfully tested for the safety parameters laid down in Annex V, for which state-of-the-art testing methodologies shall be used. The safety parameters only apply insofar when the corresponding hazard exists for the battery in question when it is used under the conditions foreseen by the manufacturer.**
- (b) include an assessment of possible additional safety hazards, not addressed in Annex V, of the battery energy storage system.**
- (c) include evidence that the additional hazards have been successfully mitigated and tested for which state-of-the-art testing methodologies shall be used;**
- (d) include mitigation instructions in case the identified hazards may occur, for example a fire or explosion.**

***The technical documentation shall be reviewed if a battery is prepared for re-use, prepared for repurpose, remanufactured or repurposed;***

**2. The Commission shall be empowered to adopt delegated acts in accordance with Article 73 to amend the safety parameters laid down in Annex V in view of technical and scientific progress.**

## Chapter III

### Labelling, *marking* and information requirements

#### Article 13

##### Labelling *and marking* of batteries

1. From *36 months after the entry into force of this Regulation or 18 months after the entry into force of the implementing act referred to in paragraph 7, whichever is later*, batteries shall be marked with a label containing the *general* information *about* laid down in Part A of Annex VI.
2. From *either 36 months after entry into force of the Regulation or 18 months after the entry into force of the implementing act referred to in paragraph 7, whichever is later*, *rechargeable* portable batteries, *LMT batteries and SLI batteries* shall be marked with a label containing information on their *capacity*.

- 2a. *From either 36 months after entry into force of the Regulation or 18 months after the entry into force of the implementing act referred to in paragraph 7, whichever is later, non-rechargeable portable batteries shall be marked with a label containing information on their minimum average duration when used in specific applications and with a label indicating ‘non-rechargeable’.*
3. From *24 months after entry into force of the Regulation*, all batteries shall be *marked* with the symbol indicating ‘separate collection’ in accordance with the requirements laid down in Part B of Annex VI.

The symbol shall cover at least 3 % of the area of the largest side of the battery up to a maximum size of 5 × 5 cm.

In the case of cylindrical battery cells, the symbol shall cover at least 1,5 % of the surface area of the battery and shall have a maximum size of 5 × 5 cm.

Where the size of the battery is such that the symbol would be smaller than *0,47 × 0,47* cm, the battery does not need to be marked but a symbol measuring at least 1 × 1 cm shall be printed on the packaging.

4. *All* batteries containing more than 0,002 % cadmium or more than 0,004 % lead, shall be marked with the chemical symbol for the metal concerned: Cd or Pb.

The symbol indicating the heavy metal content shall be printed beneath the symbol shown in Part B of Annex VI and shall cover an area of at least one-quarter the size of that symbol.

5. *From 42 months after entry into force of the Regulation, all* batteries shall be marked with a QR code in accordance with Part C of Annex VI. *The QR code* shall provide access to the following ■ :

- (a) *for LMT batteries, industrial batteries with a capacity above 2kWh and electric vehicles batteries, the battery passport in accordance with Article 65.*
- (b) *for other batteries by linking to the applicable information referred to in paragraphs 1 to 4 of this article, the declaration of conformity referred to in Article 18, the report referred to in Article 45e(3) and the information regarding the prevention and management of waste batteries laid down in Article 60(1) points (a) to (f).*

■  
■  
■  
■  
■

- (h) *for SLI* batteries, ■ the amount of cobalt, lead, lithium or nickel recovered from waste and present in active materials in the battery, in accordance with Article 8;

■

■

*This information shall be complete, up-to-date and accurate.*

6. Labels and QR code referred to in paragraphs 1 to 5 shall be printed or engraved visibly, *clearly* legibly and indelibly on the battery. Where this is not possible or not warranted on account of the nature and size of the battery, labels *and QR code* shall be affixed to the packaging and to the documents accompanying the battery.
- 6a. *The Commission is empowered to adopt delegated acts in accordance with Article 73 to amend the Regulation to provide for alternative types of smart labels instead of or in addition to the QR-code, in view of technical and scientific progress.*
- 6b. *Batteries that have been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing shall be marked with new labels or markings in accordance with this Article, and containing information on their change of status in accordance with Article 65(3)(b), which shall be accessible through QR code.*



7. The Commission shall, by **24 months after entry into force of the Regulation**, adopt implementing acts to establish harmonised specifications for the labelling requirements referred to in paragraphs 1, **2 and 2a**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).

#### Article 14

##### Information on the state of health and expected lifetime of batteries ***using a battery management system***

1. ***As from 12 months after the date of entry into force, stationary battery energy storage systems, LMT batteries and electric vehicle batteries that use a battery management system shall contain in their battery management system up-to-date data on the parameters for determining the state of health and expected lifetime of batteries as laid down in Annex VII.***
2. ***Read-only access to the values data of the parameters referred to in Annex VII through the battery management system referred to in paragraph 1 shall be provided, respecting intellectual property rights of battery manufacturer, on a non-discriminatory basis to the legal or natural person who has legally purchased the battery, including independent operators or waste management operators, or any third party acting on their behalf at any time for the purpose of:***

- (-a) making the battery available to independent aggregators or market participants through energy storage;
- (a) evaluating the residual value *or remaining lifetime* of the battery and capability for further use, *based on the estimation of the state of health*;
- (b) facilitating the *preparing for re-use, preparing for repurpose, or* repurposing or remanufacturing of the battery.

■

- 2a. *The battery management system shall also include a software reset function, in case economic operators carrying out preparing for reuse, preparing for repurpose, repurposing or remanufacturing need to upload a different battery management system software. If such software reset function is used, the original battery manufacturer shall not be held liable for any breach to the safety or functionality of the battery that could be attributed to a BMS software uploaded after that battery was placed on the market.*
- 2b. *The Commission is empowered to adopt a delegated act in accordance with Article 73 to amend the parameters for determining the state of health and expected lifetime of batteries laid down in Annex VII in view of market developments and technical and scientific progress and to ensure synergies with parameters set in United Nations (UN) Global Technical Regulation (GTR 22) on In-vehicle Battery Durability for Electrified Vehicles, with due regard to the intellectual property rights of battery manufacturer.*
- 3. The provisions of this Article shall apply in addition to those laid down in Union law on type approval of vehicles.

## Chapter IV

### Conformity of batteries

#### Article 15

##### Presumption of conformity of batteries

1. For the purposes of compliance and verification of compliance *of batteries* with the requirements set out in Articles 9, 10, 12, 13 and **14 and 65a** of this Regulation, *test*, measurements and calculations shall be made using **■** reliable, accurate and reproducible *methods*, which *take* into account the generally recognised state-of-the-art methods, and whose results are deemed to be of low uncertainty, including methods set out in standards, the reference numbers of which have been published for that purpose in the Official Journal of the European Union.
  - 1a. ***Harmonised standards shall aim to simulate real-life usage as far as possible while maintaining standard tests.***
2. Batteries which are *in conformity with* harmonised standards or parts thereof the references of which have been published in the Official Journal of the European Union shall be presumed to be in conformity with the requirements ***set out*** in Articles 9, 10, **12, 13, 14 and 65a** to the extent that those requirements are covered by such harmonised standards ***or parts thereof, and, if applicable, to the extent that the minimum values established for those requirements are attained.***

**■**

## Article 16

### Common specifications

1. The Commission ***may adopt in exceptional cases***, implementing acts laying down common specifications for the requirements set out in Articles 9, 10, 12, 13, ***14, 65a*** or tests referred to in Article ***15(1)***, where:
  - (a) those requirements or tests are not covered by harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union; ***and***
  - (b) ***the Commission has requested one or more European standardisation organisation to draft a harmonised standard for those requirements or tests; and***
  - (c) ***at least one of the following conditions has also been fulfilled:***
    - ***the request has not been accepted by any of the European standardisation organisations; or***
    - the Commission observes undue delays in the adoption of requested harmonised standards **■** ; or
    - ***a European standardisation organisation has delivered a standard that does not entirely correspond with the request of the Commission.***

**■**

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).

***In the early preparation of the draft implementing act establishing the common specification, the Commission shall gather the views of relevant bodies or expert groups established under relevant sectorial Union law, and shall duly consult all relevant stakeholders. Based on that consultation, the Commission shall prepare the draft implementing act.***

2. Batteries which are ***in conformity with*** common specifications or parts thereof shall be presumed to be in conformity with the requirements set out in Articles 9, 10, ***12, 13, 14 and 65a*** to the extent that those requirements are covered by those common specifications or parts thereof, and, if applicable, to the extent that the minimum values established for those requirements are attained.
3. ***Where a harmonised standard is adopted by an European standardisation organisation and proposed to the Commission for the publication of its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation 1025/2012. When reference of a harmonised standard is published in the Official Journal of the European Union the Commission shall repeal implementing acts referred to in paragraph 1, or parts thereof which cover the same requirements or tests referred to in paragraph 1.***

## Article 17

### Conformity assessment procedures

**I**

2. Conformity assessment of batteries with the requirements set out in Articles 6, 9, 10, *and 12 to 14* shall be carried out in accordance with *one of the following procedures*:

*For batteries manufactured in series:*

- (a) *‘Module A - Internal production control’, set out in Part A of Annex VIII or*
- (b) *‘Module D1 - Quality assurance of the production process’, set out in Part B of Annex VIII.*

*For batteries not manufactured in series:*

- (a) *‘Module A - Internal production control’, set out in Part A of Annex VIII or*
- (b) *‘Module G - Conformity based on unit verification’, set out in Part C of Annex VIII.*

3. Conformity assessment of batteries with requirements set out in Articles 7 *and* 8 shall be carried out in accordance with *one of the following procedures*:
- (a) *‘Module D1 - Quality assurance of the production process’ set out in Part B of Annex VIII for batteries manufactured in series; or*
  - (b) *‘Module G – Conformity based on unit verification’ set out in Part C of Annex VIII for batteries not manufactured in series.*
- 
- 4a. *An additional conformity assessment of batteries that have been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing, shall be carried out in accordance with the ‘Module A - Internal production control’, set out in Part A of Annex VIII, considering the requirements set out in Articles 6, 9, 10 and 12 to 14.*
5. Records and correspondence relating to the conformity assessment *procedures* of batteries shall be drawn up in *the* official language *or languages* of the Member State where the notified body carrying out the conformity assessment procedures ■ is established, or in a language *or languages* accepted by that body.

## Article 18

### EU declaration of conformity

1. The EU declaration of conformity shall state that the fulfilment of the requirements set out in *Articles 6 to 10 and 12 to 14* has been demonstrated.
2. The EU declaration of conformity shall have the model structure set out in Annex IX, shall contain the elements specified in the relevant modules set out in Annex VIII and shall be *updated, if necessary*. It shall be translated into the language or languages required by the Member State in which the battery is placed *or made available* on the market or put into service. *It shall be drawn up in electronic format and where requested, it shall be provided in paper format.*
3. Where a battery **■** is subject to more than one Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall state the Union acts concerned and their publication references.
  - 3a. *By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the battery with the requirements laid down in this Regulation.*
  - 3b. *Without prejudice to paragraph 3, a single EU declaration of conformity may be made up of one or more individual EU declarations of conformity already drawn up in compliance with a different Union act, in order to reduce the administrative burden on economic operators.*



## Article 19

### General principles of the CE marking

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

## Article 20

### Rules and conditions for affixing the CE marking

1. The CE marking shall be affixed visibly, legibly and indelibly to the battery. Where that is not possible or not warranted due to the nature of the battery, it shall be affixed to the packaging and to the documents accompanying the battery.
2. The CE marking shall be affixed before the battery is placed on the market *or put into service*.
3. The CE marking shall be followed by the identification number of the notified body *where required under Annex VIII*. That identification number shall be affixed by the notified body itself or, under its instructions, by the manufacturer or by *its* authorised representative.

4. The CE marking and the identification number referred to in paragraph 3 *may* be followed, if applicable, by any *pictogram or other mark* indicating a special risk, use or *any* danger linked to the use, storage, treatment or transport of the battery.
5. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and shall take appropriate action in the event of improper use of that marking.

## Chapter V

### Notification of conformity assessment bodies

#### Article 21

##### Notification

- I.* Member States shall notify the Commission and the other Member States of conformity assessment bodies authorised to carry out conformity assessment in accordance with this Regulation.

## Article 22

### Notifying authorities

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 27.
2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.
3. Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 of this Article to a body, which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article 23. In addition, it shall have arrangements to cover liabilities arising out of its activities.
4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

## Article 23

### Requirements relating to notifying authorities

1. A notifying authority shall be established *in such a way that no conflict* of interest with conformity assessment bodies *occurs*.
  - 1a. *A notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.*
2. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment of the conformity assessment bodies applying for notification in accordance with Article 28.
3. A notifying authority shall not offer or provide any activities that conformity assessment bodies perform or consultancy services on a commercial or competitive basis.
4. A notifying authority shall safeguard the confidentiality of the information it obtains. However, it shall exchange information on notified bodies with the Commission as well as with notifying authorities of other Member States and other relevant national authorities.
5. A notifying authority shall have a sufficient number of competent personnel *and sufficient funding* at its disposal for the proper performance of its tasks.

## Article 24

### Information obligation on notifying authorities

Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto.

The Commission shall make that information publicly available.

## Article 25

### Requirements *relating* to notified bodies

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in paragraphs 2 to 11.
2. A conformity assessment body shall be established under the national law of a Member State and have legal personality.

3. A conformity assessment body shall be a third-party body independent from any and all business ties and from the *batteries* it assesses, in particular from battery manufacturers, the battery manufacturers' trade partners, shareholding investors on the battery manufacturers' plants and from other notified bodies and the notified bodies' business associations, parent companies or subsidiaries.
4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, *importer, distributor*, installer, purchaser, owner, user or maintainer of the batteries which they assess, nor the representative of any of those parties. This shall not preclude the use of *assessed* batteries that are necessary for the operations of the conformity assessment body or the use of *such* batteries for personal purposes.

A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture, marketing, installation, use or maintenance of those batteries, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall in particular apply to consultancy services.

A conformity assessment body shall ensure that the activities of its parent or sister companies, subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of its conformity assessment activities.

5. A conformity assessment body and its personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of its conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.
6. A conformity assessment body shall be capable of carrying out all the conformity assessment *tasks assigned to it* in Annex VIII, *periodical audits in accordance with Article 45a(1a) and third-party verification in accordance with Article 45d* in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times, and for each conformity assessment procedure *set out in Annex VIII, periodical audits in accordance with Article 45a(1a) and third-party verification in accordance with Article 45d, and for the batteries* in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:

- (a) **■** personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment *tasks*;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures;

- (c) appropriate policies and procedures to distinguish between activities that it carries out as a notified body and other **tasks**;
- (d) procedures for the performance of conformity assessment **tasks** which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the battery technology in question and the mass or serial nature of the production process.

A conformity assessment body shall ***have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall*** have access to all ***necessary information***, testing equipment or facilities. ***This shall include establishment and the supervision of internal procedures, general policies, codes of conduct or other internal rules, the assignment of personnel to specific tasks and the conformity assessment decisions, without delegating them to a subcontractor or a subsidiary.***

7. The personnel responsible for carrying out conformity assessment tasks shall have the following:
- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
  - (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;



- (c) appropriate knowledge and understanding of the requirements *and obligations* set out in *Articles 6 to 10 and 12 to 14 and in Articles 45a to 45e*, of the applicable harmonised standards referred to in Article 15 and common specifications referred to in Article 16 and of the relevant provisions of Union harmonisation legislation and of national legislation;
- (d) the ability to draw up certificates, records and reports demonstrating that conformity assessments have been carried out.

8. The impartiality of a conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment *tasks* shall be guaranteed.

The remuneration of the top level management and the personnel responsible for carrying out the conformity assessments *tasks* shall not depend on the number of conformity assessments carried out or on the results of those assessments.

9. A conformity assessment body shall take out liability insurance unless liability is assumed by the state in accordance with national law in the *notifying* Member State, *or the* Member State itself is directly responsible for the conformity assessment.

10. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out the conformity assessment *tasks* in accordance with Annex VIII, *periodical audits in accordance with Article 45a(1a), or third-party verification in accordance with Article 45d*, except in relation to the *notifying authority and national* authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.
11. A conformity assessment body shall participate in, or ensure that its personnel responsible for carrying out the conformity assessment *tasks is* informed of, the relevant standardisation activities and the activities of the notified body coordination group established pursuant to Article 37 and shall apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

## Article 26

### Presumption of conformity of notified bodies

Where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in the Official Journal of the European Union it shall be presumed to comply with the requirements set out in Article 25 in so far as the applicable harmonised standards cover those requirements.

## Article 27

### Subsidiaries of and subcontracting by notified bodies

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 25 and shall inform the notifying authority accordingly.
2. A notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever those are established
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client. ■
4. A notified body shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of the subcontractor or the subsidiary and the work carried out by them under Annex VIII *and under Articles 45a(1a) and 45d.*

## Article 28

### Application for notification

1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
2. The application for notification shall be accompanied by a description of the conformity assessment activities, of the conformity assessment *module or* modules set out in Annex VIII *or the procedures set out in Articles 45a(1a) and 45d*, and of the *batteries* for which the conformity assessment body claims to be competent, as well as by an accreditation certificate, *where applicable*, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article 25.
3. Where the conformity assessment body concerned cannot provide an accreditation certificate as referred to in paragraph 2, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 25, including appropriate documentation demonstrating that the conformity assessment body is independent in the meaning of paragraph 3 of that Article.

## Article 29

### Notification procedure

1. A notifying authority may notify only conformity assessment bodies which have satisfied the requirements laid down in Article 25.
2. The notifying authority shall send a notification to the Commission and the other Member States of each conformity assessment body referred to in paragraph 1 using the electronic notification tool developed and managed by the Commission.
3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules *or the procedures set out in Articles 45a(1a) and 45d*, and the batteries concerned and the relevant attestation of competence.
4. Where a notification is not based on an accreditation certificate as referred to in Article 28(2), the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 25.

5. The conformity assessment body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within two weeks of the notification where it includes an accreditation certificate referred to in Article 28(2) or within two months of the notification where it includes documentary evidence referred to in *paragraph 4. Only such conformity assessment body shall be considered as notified body for the purposes of this Regulation.*
6. The notifying authority shall inform the Commission and the other Member States of any subsequent relevant changes to the notification referred to in paragraph 2.

## Article 30

### Identification numbers and lists of notified bodies

1. The Commission shall assign an identification number to a notified body.  
  
It shall assign a single such number even where the body is notified under several Union acts.
2. The Commission shall make publicly available the list of notified bodies *under this Regulation*, including the identification numbers that have been assigned to them and the conformity assessment activities for which they have been notified.

The Commission shall ensure that the list is kept up to date.

## Article 31

### Changes to notifications

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 25 or that it is failing to fulfil its obligations the notifying authority shall restrict, suspend or withdraw the notification, as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly.
2. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying authority shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

## Article 32

### Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention, *in particular by economic operators and other relevant stakeholders, regarding* the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.

2. The notifying authority shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the notified body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
4. Where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, it shall adopt an implementing act **requiring** the notifying **Member State** to take the necessary corrective action, including withdrawal of the notification if necessary. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 74(2).

### Article 33

#### Operational obligations of notified bodies

1. A notified body shall carry out conformity assessments in accordance with the conformity assessment procedures set out in Annex VIII, **Article 45a(1a) or in Article 45d, as determined by its scope of notification.**



2. A notified body shall **carry out conformity assessments** in a proportionate manner, avoiding unnecessary burdens for economic operators, and taking due account of the size of an undertaking, the sector in which the undertaking operates, the structure of the undertaking, the degree of complexity of the battery to be assessed and the mass or serial nature of the production process.  
  
In so doing, the notified body shall nevertheless respect the degree of rigour and the level of protection required for the compliance of the battery with this Regulation.
3. Where a notified body finds that the **applicable** requirements set out in **Articles 6 to 10, 12 to 14, 45b and 45c, in corresponding** harmonised standards referred to in Article 15, common specifications referred to in Article 16 or other technical specifications have not been met **■** , it shall require **the manufacturer or other relevant economic operator**, to take appropriate corrective action in view of a second and final **conformity assessment**, unless the deficiencies cannot be remedied, in which case **it shall not issue** the certificate **of conformity or approval decision**.
4. Where, in the course of the monitoring of conformity following the issue of **■** an approval decision, a notified body finds that **there is** no longer **compliance**, it shall require the manufacturer **or the economic operator referred to in Article 45a as applicable**, to take appropriate corrective action and shall suspend or withdraw **■** the approval decision, if necessary.

5. Where corrective action *referred to in paragraph 4* is not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw *the* approval *decision*, as appropriate.

#### Article 34

##### Appeal against decisions of notified bodies

Member States shall ensure that an appeal procedure against the decisions of notified bodies is available.

#### Article 35

##### Information obligation on notified bodies

1. A notified body shall inform the notifying authority of the following:
  - (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity or approval decision;
  - (b) any circumstances affecting the scope of, or the conditions for, its notification;
  - (c) any request for information which it has received from market surveillance authorities regarding its conformity assessment activities;
  - (d) on request, any conformity assessment activities performed within the scope of its notification and any other activity performed, including cross-border activities and subcontracting.

2. A notified body shall provide other *bodies* notified *under this Regulation* carrying out similar conformity assessment activities covering the same batteries with relevant information on issues relating to:

(a) *negative and, on request, positive conformity assessment;*

(b) *any suspension, or withdrawal or other restriction of an approval decision.*

#### Article 36

##### Exchange of experience *and good practice*

The Commission shall provide for the organisation of exchange of experience *and good practice* between the Member States' ■ authorities responsible for notification policy.

#### Article 37

##### Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between *bodies* notified *under this Regulation* are put in place and properly operated in the form of a sectoral group ■ of notified bodies.

■ Notified **bodies** shall participate in the work of that group ■, directly or by means of designated representatives.

## Chapter VI

### Obligations of economic operators other than the obligations in *Chapters VI.A and VII*

#### Article 38

##### Obligations of manufacturers

1. When placing a battery on the market or putting it into service, including for the manufacturers' own purposes, manufacturers shall ensure that the battery:
  - (a) has been designed and manufactured in accordance with the **applicable** requirements set out in Articles 6 to **10**, **Article 12** and Article 14, **and is accompanied by clear, understandable and readable instructions and safety information, provided under those articles in a language or languages, which can be easily understood by end-users, as determined by the Member State in which the battery is to be placed on the market or put into service**; and
  - (b) is labelled in accordance with the **applicable** requirements set out in Article 13.

2. ***Before placing a battery on the market or putting it into service***, manufacturers shall draw up the technical documentation referred to in Annex VIII and carry out the relevant conformity assessment procedure, referred to, in Article 17, or have it carried out .
3. Where compliance of a battery with the applicable requirements has been demonstrated by the relevant conformity assessment procedure referred to in Article 17, manufacturers shall draw up an EU declaration of conformity in accordance with Article 18 and affix the CE marking in accordance with Articles 19 and 20.
- 4.
5. Manufacturers shall keep the technical documentation referred to in Annex VIII and the EU declaration of conformity at the disposal of national authorities for 10 years after the battery has been placed on the market or put into service.
6. Manufacturers shall ensure that procedures are in place for a battery that is part of a series production to remain in conformity with this Regulation. ***In doing so, manufacturer shall adequately take into account*** changes in the production process or in battery design or characteristics and changes in the harmonised standards referred to in article 15, common specifications referred to in Article 16 or other technical specifications by reference to which the conformity of the battery is declared or by application of which its conformity is verified .

7. Manufacturers shall ensure that *batteries which they place on the market bear a model identification and batch or serial number, or product number or another element allowing their identification. Where the size or nature of the battery does not allow it, the required information shall be provided on the packaging or in a document accompanying the battery.*
8. Manufacturers shall indicate *on the battery* their name, registered trade name or registered trade mark, the postal address, *indicating a single contact point*, and web address *and e-mail address, where one exist. Where that is not possible, the required information shall be provided on the packaging or in a document accompanying the battery. The contact details* shall be in a language *or languages, which can be* easily understood by end-users and market surveillance authorities, *as determined by the Member State in which the battery is to be placed on the market or put into service*, and shall be clear, understandable and legible.
- 
10. Manufacturers shall provide access to the *values of* the parameters *referred to in Annex VII* in the battery management system referred to in paragraph 1 of Article 14 ■ , in accordance with the requirements laid down in *that Article*.

11. Manufacturers who consider or have reason to believe that a battery which they have placed on the market or put into service is not in conformity with *one or more of the applicable* requirements set out in *Articles 6 to 10 or 12 to 14* shall immediately take the corrective action necessary to bring that battery into conformity, to withdraw it or recall it, as appropriate. Furthermore, where the battery presents a risk, manufacturers shall immediately inform the *market surveillance* authority of the Member State in which they made the battery available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective action taken.
12. Manufacturers shall, further to a reasoned request from a national authority, provide *that authority* with all the information and   documentation necessary to demonstrate the conformity of the battery with the requirements set out in *Articles 6 to 10 and 12 to 14*, in a language *or languages*, which can be easily understood by that authority. That information and   documentation shall be provided in *electronic format and, on request, in paper format*. Manufacturers shall cooperate with the national authority, at its request, on any action taken to eliminate the risks posed by a battery which they have placed on the market or put into service.
- 12a. Economic operators that carry out preparing for re-use, preparing for repurpose or repurposing, or remanufacturing, and place on the market or put into service a battery that has undergone any of these operations, shall be considered as manufacturer for the purpose of this Regulation.*

## Article 38a

### *Obligations of suppliers of battery cells and battery modules*

*The supplier of battery cells and battery modules shall provide the information and documentation necessary to comply with the requirements of this regulation when supplying battery cells or modules to the manufacturer. The information shall be provided free of charge.*



## Article 40

### Obligations of authorised representatives

1. A manufacturer *may, by a written mandate, designate an* authorised representative.

■ ■ The authorised representative's mandate ■ shall be valid only when accepted in writing by the authorised representative ■ .

3. The obligations laid down in Article 38(1) and *Articles 45a to 45e and* the obligation to draw up technical documentation shall not form part of the authorised representative's mandate.

4. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The authorised representative shall *have the appropriate means to perform the tasks specified in the mandate. The authorised representative shall* provide a copy of the mandate to the *market surveillance* authority, upon request, *in a Union language determined by the national authority*. The mandate shall allow the authorised representative to do at least the following:





- (b) keep the EU declaration of conformity, *the technical documentation* and the *verification report and approval decision referred to in paragraph 4a of Article 45d and the audit reports referred to in paragraph 1a of Article 45a* at the disposal of *national* authorities for 10 years after the battery has been placed on the market *or put into service*;
- (c) further to a reasoned request from a national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of the battery. *That information and the documentation shall be provided in electronic format and, on request, in paper format*;
- (d) cooperate with the national authorities, at their request, on any action taken to eliminate the risks posed by batteries covered by the authorised representative's mandate;

■

■

**4a.** *Where the battery presents a risk, authorised representatives shall immediately inform the market surveillance authorities thereof.*

## Article 41

### Obligations of importers

1. Importers shall only place on the market **■** a battery which is compliant with the ***applicable*** requirements of ***Articles 6 to 10 and 12 to 14***.
2. Before placing a battery on the market **■**, importers shall verify that:
  - (a) ***the EU declaration of conformity and technical documentation referred to in Annex VIII have been drawn up and that the relevant conformity assessment procedure referred to in Article 17, has been carried out by the manufacturer;***
  - (b) ***the battery bears the CE marking referred to in Article 19, and is marked in accordance with Article 13,***
  - (c) ***the battery is accompanied by the required documents and by instructions and safety information in a language or languages, which can be easily understood by end-users, as determined by the Member State in which the battery is to be made available on the market; and***

*(d) the manufacturer has complied with the requirements set out in Article 38(7a) and (8).*

Where an importer considers or has reason to believe that a battery is not in conformity with the *applicable* requirements set out in *Articles 6 to 10 and 12 to 14*, the importer shall not place *the battery* on the market **■** until it has been brought into conformity.

Furthermore, where the battery presents a risk, the importer shall inform the manufacturer and the market surveillance *authority of the Member States in which it made the battery available on the market* to that effect *giving details of the non-compliance and of any corrective action taken*.

3. Importers shall indicate on the battery their name, registered trade name or registered trade mark, **■** the *postal* address, *indicating a single contact point, and web address and e-mail address*, where *one exists*. *Where* that is not possible, *the required information shall be provided on the* packaging or in a document accompanying the battery. The contact details shall be in a language *or languages, which can be* easily understood by *end-users, as determined by the Member State in which the battery is to be made available on* the market, *and shall be clear, understandable and legible*.

**■**

5. Importers shall ensure that, while a battery is under their responsibility, storage or transport conditions do not jeopardise its compliance with the *applicable* requirements set out in *Articles 6 to 10 and 12 to 14*.

6. When deemed appropriate with regard to the risks presented by a battery, importers shall, to protect the human health and safety of consumers, carry out sample testing of marketed batteries, investigate, and, if necessary, keep a register of complaints, of non-conforming batteries and battery recalls, and shall keep distributors informed of such monitoring.
7. Importers who consider or have reason to believe that a battery, which they have placed on the market **■**, is not in conformity with the *applicable* requirements set out in *Articles 6 to 10 and 12 to 14*, shall immediately take the corrective action necessary to bring that battery into conformity, to withdraw it or recall it, as appropriate. Furthermore, where the battery presents a risk, importers shall immediately inform the *market surveillance* authority of the Member State in which they made the battery available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective action taken.
8. Importers shall, *for 10 years after the battery has been placed on the market, keep* a copy of the EU declaration of conformity at the disposal of the national authorities and *ensure that the technical documentation referred to in Annex VIII is made available to those authorities, upon request.*
9. Importers shall, further to a reasoned request from a national authority, provide *that authority* with all the information and **■** documentation necessary to demonstrate the conformity of a battery with the *applicable* requirements set out in *Articles 6 to 10 and 12 to 14*, in a language *or languages, which* can be easily understood by that authority. That information and the **■** documentation shall be provided *in electronic format and, on request, in paper format*. Importers shall cooperate with the national authority, at its request, on any action taken to eliminate the risks posed by batteries, which they have placed on the market **■**.

## Article 42

### Obligations of distributors

1. When making a battery available on the market, distributors shall act with due care in relation to the requirements of this Regulation.
2. Before making a battery available on the market, distributors shall verify that:
  - (a) the *producer is* registered *in the register of producers referred to in* Article 46;
  - (b) the battery bears the CE marking *referred to in Article 19 and is marked in accordance with Article 13;*
  - (c) *the* battery is accompanied by the required documents *and by instructions and safety information in* language *or languages*, which can be easily understood by *end-users, as determined by* the Member State in which the battery is to be made available on the market *or put into service; and*
  - (d) the manufacturer and the importer have complied with the requirements set out in *Article 38(7a) and (8)* and Article 41(3) █ respectively.
3. Where a distributor considers or has reason to believe that a battery is not in conformity with *any of the applicable* requirements set out in *Articles 6 to 10 or 12 to 14*, the distributor shall not make the battery available on the market until it has been brought into conformity. Furthermore, where the battery presents a risk, the distributor shall inform the manufacturer or the importer to that effect as well as the █ market surveillance authorities.

4. Distributors shall ensure that, while a battery is under their responsibility, storage or transport conditions do not jeopardise its compliance with the *applicable* requirements set out in *Articles 6 to 10 and 12 to 14*.
5. Distributors who consider or have reason to believe that a battery, which they have made available on the market, is not in conformity with *any of the applicable* requirements set out in *Articles 6 to 10 or 12 to 14*, shall make sure that the corrective action necessary to bring that battery into conformity, to withdraw it or recall it, as appropriate, are taken. Furthermore, where the battery presents a risk, distributors shall immediately inform the *market surveillance authorities* of the Member States in which they made the battery available on the market to that effect, giving details, in particular, of the non-compliance and of any corrective action taken.
6. Distributors shall, further to a reasoned request from a national authority provide *that authority* with all the information and the   documentation necessary to demonstrate the conformity of a battery with the *applicable* requirements set out in *Articles 6 to 10 and 12 to 14* in a language *or languages, which* can be easily understood by that authority. That information and the   documentation shall be provided in *electronic format and, on request, in paper format*. Distributors shall cooperate with the national authority, at its request, on any action taken to eliminate the risks posed by batteries that they have made available on the market.

## Article 43

### Obligations of fulfilment service providers

Fulfilment service providers shall ensure that, for batteries that they handle, the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the batteries' compliance with the requirements set out in *Articles 6 to 10 and 12 to 14*. ***Without prejudice to the obligations of the relevant economic operators set out in Chapter VI, fulfilment service providers shall in addition to the requirement referred to in the first subparagraph perform the tasks set out in Article 40(4), point (d), and Article 40(4a).***

## Article 44

### Case in which obligations of manufacturers apply to importers and distributors

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation and that importer or distributor shall be subject to the obligations of the manufacturer under Article 38, where ***any of the following applies:***

- (a) a battery is placed on the market or put into service under that importer's or distributor's own name or trademark; ***or***
- (b) a battery already placed on the market or put into service is modified by that importer or distributor in such a way that compliance with the ***relevant*** requirements of this Regulation may be affected; ***or***

- (c) the purpose of a battery already placed on the market or put into service is modified by that importer or distributor.

*Article 44a*

*Obligations of economic operators placing on the market batteries that have been subject to preparing for re-use, preparing for repurpose, repurposing or remanufacturing*

- 1. Economic operators placing on the market or putting into service batteries that have been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing shall ensure that the examination, performance testing, packing and shipment of those batteries, and of their components that are subject to any of those operations, is carried out following adequate quality control and safety instructions.*
- 2. Economic operators placing on the market or putting into service batteries that have been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing shall ensure that the battery, complies with the requirements of this Regulation, any relevant product, environmental, human health protection and transport safety requirements in other Union legislation, taking into account that, as a result of those operations, that battery may fall under a different battery category. For remanufacturing operations, such economic operators shall provide, upon request, market surveillance authorities with the documentation necessary to demonstrate that the remanufactured battery conforms with the definition in Article 2(26(a)).*



## Article 45

### Identification of economic operators

1. ***Economic operators shall, upon a request of a [ ] national authority, provide information on the following to the market surveillance authorities:***
  - (a) the identity of any economic operator that has supplied them with a battery;
  - (b) the identity of any economic operator to which they have supplied a battery, as well as the quantity and exact models.
2. ***Economic operators shall be able to provide the information referred to in paragraph 1 for 10 years after they have been supplied with the battery and for 10 years after they have supplied the battery.***

## Chapter VI.A

### *Obligations of economic operators on due diligence policies*

#### Article 45a

##### ■ Due diligence policies

1. ***From 24 months after ■ entry into force of the Regulation, the economic operator that places batteries on the market, shall comply with the due diligence obligations set out in paragraphs 1a and 1b and Articles 45b, 45c and 45e(1) and shall, to that end, set up and implement due diligence policies.***

***This Chapter shall not apply to economic operators when placing on the market or putting into service batteries that have been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing, if such batteries had already been placed on the market or put into service before undergoing such operations.***

***This Chapter shall not apply to economic operators that had a net turnover of less than EUR 40 million in the financial year preceding the last financial year, and that are not part of a group, consisting of parent and subsidiary undertakings, which, on a consolidated basis, exceeds the limit of EUR 40 million.***

*The provisions of this Chapter shall apply without prejudice to those laid down in Union law on due diligence obligations in relation to minerals and metals originating from conflict-affected and high-risk areas.*

- 1a. The economic operator referred to in paragraph 1 shall have its due diligence policies verified by a notified body ('third-party verification') in accordance with Article 45d and periodically audited by the notified body to make sure that the due diligence policies are maintained and applied in accordance with the requirements set out in Articles 45b, 45c and 45e(1). The notified body shall provide the audited economic operator with an audit report.*
- 1b. The economic operator referred to in paragraph 1 shall keep documentation demonstrating its respective compliance with the obligations set out in Articles 45b, 45c and 45e(1), including the verification report and approval decision referred to in Article 45d and the audit reports referred to in paragraph 1a, for ten years after the last battery manufactured under the relevant battery due diligence policies has been placed on the market.*
- 1c. Without prejudice to the individual responsibility of economic operators for their due diligence processes, the requirements set out in Article 45a to 45c and 45e may be implemented in collaboration with other actors, including through due diligence schemes, recognised under this Regulation.*

2. ***By 18 months after entry into force of the Regulation, the Commission shall publish guidelines as regards the application of the due diligence requirements defined in Articles 45b and 45c, with regard to the risks referred to in Annex X, point 2, and particularly in line with the international instruments referred to in Annex X, point 3.***
3. ***Member States may, in order to provide information and support to economic operators in fulfilling the due diligence obligations resulting from this Regulation, set up and operate individually or jointly dedicated websites, platforms or portals. The Commission may complement Member States' support measures building on existing Union action to support due diligence in the Union and in third countries and may devise new measures to help companies fulfil their obligations.***
- 3a. ***The Commission shall regularly make an assessment on the need to update the list of raw materials and risk categories set out in Annex X.***

The Commission is empowered to adopt delegated acts in accordance with Article 73 to:

- (a) amend the lists of raw materials ***in Annex X, point 1***, and risk categories in Annex X, ***point 2***, in view of scientific and technological progress in battery manufacturing and chemistries and amendments to Regulation (EU) 2017/821;
- (aa) ***amend the list of international instruments in Annex X in accordance with developments within the relevant international fora concerning standards related to due diligence policies, protection of the environment and of social rights;***

- (b) amend the obligations on the economic operator referred to in paragraph 1 set out in paragraphs 2 to 4 in view of amendments to Regulation (EU) 2017/821 and **amend the list of internationally recognised due diligence instruments** set out in Annex X, **point 3a**;

#### *Article 45b*

##### *Economic operator's management system*

■ The economic operator referred to in *Article 45a* shall:

- (a) adopt, and clearly communicate to suppliers and the public, a company **due diligence policy for batteries, concerning** raw materials indicated in Annex X, point 1 **and associated social and environmental risk categories indicated in Annex X, point 2**;
- (b) incorporate in its **due diligence** policy standards consistent with the standards set out in **internationally recognised due diligence Guidance standards listed** in Annex X, **point 3a**;
- (c) structure its respective internal management systems to support ■ **due diligence policy** by assigning responsibility to **the top management level of the economic operator to oversee the due diligence policy** as well as maintain records of those systems for a minimum of **ten** years;

- (d) establish and operate a system of controls and transparency over the *value* chain, including a chain of custody or traceability system, *identifying* upstream actors in the supply chain.

Such a system shall be supported by documentation that provides *at least* the following information:

- (i) description of the raw material, including its trade name and type;
- (ii) name and address of the supplier that supplied the raw material present in the batteries to the economic operator that places on the market the batteries containing the raw material in question;
- (iii) country of origin of the raw material and the market transactions from the raw material's extraction to the immediate supplier to the economic operator *that places the battery on the market*;
- (iv) quantities of the raw material present in the battery placed on the market, expressed in percentage or weight;
- (v) *third-party verification reports done by a notified body and concerning the upstream suppliers as referred to in Article 45c(3b)*;

- (vi) *if the reports referred to in point (v) are not available: where the raw material originates from a conflict-affected and high-risk areas, additional information in accordance with the specific recommendations for upstream economic operators, as set out in the OECD Due Diligence Guidance, where relevant, such as the mine of origin, locations where raw materials are consolidated, traded and processed, and taxes, fees and royalties paid.*

*Third party verification reports referred to in point (v) shall be made available to the downstream operators of the supply chain.*

- (e) incorporate its *due diligence* policy into contracts and agreements with suppliers, including their risk management measures;
- (f) establish a grievance mechanism, *including an early-warning* risk-awareness system *and a remediation mechanism*, or provide *for such mechanisms* through collaborative *agreements* with other economic operators or organisations, or by facilitating recourse to an external expert or body, such as an ombudsman; *such mechanisms shall be based on the UN Guiding Principles on Business and Human Rights.*

## *Article 45c*

### *Risk management plan*

3. The economic operator referred to in *Article 45a* shall:
- (a) identify and assess **risks of** adverse impacts **in its supply chain**, associated to the risk categories listed in Annex X, point 2 **as part of its management plan, including** on the basis of the information provided pursuant to *Article 45b* **and any other relevant information that is either publicly available or provided by stakeholders**, against the standards of **its due diligence** policy;
  - (b) **design and** implement a strategy to respond to the identified risks **█** so as to prevent, **mitigate and otherwise address** adverse impacts by:
    - (i) reporting findings of the **█** risk assessment to **the top management level of the economic operator assigned in accordance with point (c) of Article 45b**;
    - (ii) adopting risk management measures consistent with **the internationally recognised due diligence standards listed in Annex X, point 3a**, considering their ability to influence, and where necessary take steps to exert pressure on suppliers **and their subsidiaries and subcontractors** who can most effectively prevent or mitigate the identified risk;



- (iii) ***designing and*** implementing the risk management plan, monitoring and tracking performance of risk mitigation efforts, reporting back to ***the top management level of the economic operator assigned in accordance with point (c) of Article 45b***, and considering suspending or discontinuing engagement with a supplier ***or its subsidiary or subcontractor*** after failed attempts at mitigation, based on relevant ***contracts and*** arrangements ***referred to in point (e) of Article 45b***;
- (iv) undertaking additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

If the economic operator referred to in ***Article 45a*** pursues risk mitigation efforts while continuing trade or temporarily suspending trade, it shall consult with suppliers and with the stakeholders concerned, including local and ***national*** government authorities, international or civil society organisations and affected third parties ***such as local communities, before establishing*** a strategy for measurable risk mitigation in the risk management plan ***referred to in point (c)(iii) of paragraph 3***.

The economic operator referred to in **Article 45a** shall identify and assess the probability of adverse impacts in the risk categories listed in Annex X, point 2, in its supply chain. ***The economic operator shall identify and assess the risks in its supply chain as part of its own risk management systems. In such cases, the economic operator shall carry out third party verifications of their own due diligence chains via a notified body in accordance with Article 45d.*** The economic operator ***may make use of available reports by third-party verification done by a notified body concerning due diligence policies implemented in accordance with the relevant requirements of this Chapter, including those in Article 45b(d)(vi), by suppliers in that chain, and, by assessing, as appropriate, its due diligence practices. Those verification reports shall be*** in accordance with **Article 45d**.

The economic operator referred to in **Article 45a** shall report the findings of the risk assessment referred to in **paragraph 3b** to its **top** management **level assigned in accordance with point (c) of Article 45b, and a strategy, referred to in point (c) of paragraph 3**, shall be implemented.

## *Article 45d*

### *Third-party verification of battery due diligence policies*

4. ■ The third-party verification by a notified body shall:
- (a) include in its scope all activities, processes and systems used by economic operators to implement their ■ due diligence requirements in accordance with *Articles 45b, 45c and 45e(1)*;
  - (b) have as its objective the determination of conformity of the ■ due diligence practices of economic operators placing batteries on the market with *Articles 45b, 45c and 45e(1)*;
  - (ba) where relevant, carry out checks on undertakings and gather information from stakeholders;*
  - (c) *identify areas for the potential improvement for* the economic operators that place batteries on the market on how to improve their ■ due diligence practices;
  - (d) respect the audit principles of independence, competence and accountability, as set out in the OECD Due Diligence Guidance.
- 4a. The notified body shall issue a verification report that records the activities undertaken in accordance with paragraph 4 and their outcomes. Where the due diligence policies of the economic operator referred to in Article 45a comply with the obligations set out in Articles 45b, 45c and 45e(1), the notified body shall issue an approval decision.*

## *Article 45e*

### *Disclosure of information on due diligence policies*

5. The economic operator referred to in *Article 45a* shall make available upon request to Member States' market surveillance authorities **or national authorities the verification report and approval decision issued** in accordance with *Article 45d*, **the audit reports referred to in paragraph 1a of Article 45a and available** evidence of compliance with a due diligence scheme recognised by the Commission in accordance with *Article 45f*.
6. The economic operator referred to in *Article 45a* shall make available to its immediate downstream purchasers all **relevant** information gained and maintained pursuant to its due diligence policies with due regard for business confidentiality and other competitive concerns.

The economic operator referred to in *Article 45a* shall on an annual basis **review and make publicly available**, including on the internet, **report** on its due diligence policies. That report shall contain, **in a manner that is easily comprehensible for end-users and clearly identifies the batteries concerned, the data and information on** steps taken by that economic operator to comply with the requirements set out in *Articles 45b and 45c*, including findings of significant adverse impacts in the risk categories listed in Annex X, point 2, and how they have been addressed, as well as a summary report of the third-party verifications carried out in accordance with *Article 45d*, including the name of the notified body, with due regard for business confidentiality and other competitive concerns. **It shall also elaborate, where relevant, on access to information, public participation in decision-making and access to justice in environmental matters in relation the sourcing, processing and trading of the raw materials.**

Where the economic operator referred to in *Article 45a can demonstrate* that the raw materials listed in Annex X, point 1, that are present in the battery are derived █ from recycled sources, it shall publicly disclose its conclusions in reasonable detail, with due regard for business confidentiality and other competitive concerns.

## Article 45f

### *Recognition of* due diligence schemes

1. Governments, industry associations and groupings of interested organisations that have developed and oversee due diligence schemes ("scheme owners") may apply to the Commission to have their █ due diligence schemes recognised by the Commission. The Commission **shall be** empowered to adopt implementing acts establishing the information requirements that the application to the Commission shall contain. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).
2. Where, on the basis of the evidence and information provided pursuant to the *paragraph 1*, the Commission determines that the █ due diligence scheme referred to in paragraph 1, enables that economic operators *to fulfil* the requirements set out in *Articles 45a to 45c and 45e* of this Regulation, it shall adopt an implementing act granting that scheme a recognition of equivalence with the requirements set out in this Regulation. The OECD **Centre for Responsible Business Conduct shall** be consulted prior to the adoption of such implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).

When making a determination on the recognition of a due diligence scheme, the Commission shall take into account the diverse industry practices covered by that scheme and shall have regard to the risk-based approach and method used by that scheme to identify risks.

3. The Commission is empowered to adopt *delegated acts in accordance with Article 73* setting out the criteria and the methodology according to which the Commission shall determine, in accordance with paragraph 2, whether ■ due diligence schemes ensure that economic operators fulfil the requirements set out in *Articles 45a to 45c and 45e of this Regulation*. The Commission shall also, as appropriate, periodically verify that recognised ■ due diligence schemes continue to fulfil the criteria that led to a recognition of equivalence decision adopted pursuant to paragraph 2.
4. The owner of a ■ due diligence scheme for which the recognition of equivalence was granted in accordance with paragraph 2 shall inform the Commission without delay of any changes or updates made to that scheme. *The Commission shall assess whether such changes or updates affect the basis for the recognition of equivalence of that scheme and take appropriate action.*
5. If there is evidence of repeated or significant cases where economic operators implementing a scheme recognised in accordance with paragraph 2 have failed to fulfil the requirements set out in Article *45a to 45c and 45e* of this Regulation, the Commission shall examine, in consultation with the owner of the recognised scheme, whether those cases indicate deficiencies in the scheme.

6. Where the Commission identifies a failure to comply with the requirements set out in *Articles 45a to 45c and 45e* of this Regulation or deficiencies in a recognised **■** due diligence scheme, it may grant the scheme owner an appropriate period of time to take remedial action.
7. Where the scheme owner fails or refuses to take the necessary remedial action, and where the Commission has determined that the failure or deficiencies referred to in paragraph 6 compromise the ability of the economic operator referred to in Article *45a(1)* implementing a scheme to comply with the requirements set out in *Articles 45a to 45c and 45e* of this Regulation or where repeated or significant cases of non-compliance by economic operators implementing a scheme are due to deficiencies in the scheme, the Commission shall adopt an implementing act withdrawing the recognition of equivalence of the scheme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).
8. The Commission shall establish and keep up-to-date a register of recognised **■** due diligence schemes. That register shall be made publicly available on the internet.

## Chapter VII

### Management of *waste* batteries

#### Article 45g

##### Competent authority

1. Member States shall designate one or more competent authorities responsible for carrying out obligations arising from *this Chapter* and monitoring and verifying compliance of the producers and producer responsibility organisations with *those* requirements.
  - 1a. Each Member State may also designate one contact point, among the competent authorities referred to in the first subparagraph, for the purpose of communicating with the Commission pursuant to paragraph 3.*
2. Member States shall lay down the details of the competent authority's or authorities' organisation and operation, including the administrative and procedural rules to ensure:
  - (a) the registration of producers in accordance with Article 46;
  - (b) the authorisation of producers and producer responsibility organisations in accordance with Article 47b;



- (c) the oversight of implementation of extended producer responsibility obligations in accordance with Article **47a**;
  - (d) the collection of data on batteries **and waste batteries** in accordance with Article 61;
  - (e) making information available in accordance with Article 62.
3. By [three months after the date of entry into force of this Regulation], Member States shall notify the Commission of the names and addresses of the competent authorities designated pursuant to paragraph 1. Member States shall inform the Commission without undue delay of any changes to the names or addresses of those competent authorities.

## Article 46

### Register of producers ■

1. Member States shall establish a register of producers which shall serve to monitor compliance of producers with the requirements of this Chapter. ■
2. Producers shall be obliged to register **in the register referred to in paragraph 1**. They shall to that end submit an application **for registration in each** Member State where they make a battery available on the market for the first time. Where a producer has appointed a producer responsibility organisation in accordance with Article **47a(1)**, the obligations under this article shall be met by that organisation *mutatis mutandis* unless otherwise specified **by the Member State**.

*The obligations under this Article may, on producer's behalf, be met by an authorised representative for the EPR.*

*Producers shall not make available batteries, including those incorporated in appliances, light means of transport or vehicles, on the market of a Member State, if they or, in case of authorisation, their authorised representatives for the EPR, are not registered in such Member State.*

2b. The application for registration ■ shall *include* the following information ■ :

- (a) name and *brand names (if available) under which the producer operate in the Member State and* address of the producer including postal code and place, street and number, country, telephone ■ , if any, *web* address and e-mail address, *indicating a single contact point*;
- (b) national identification code of the producer, including its trade register number or equivalent official registration number *and the* European or national tax *identification* number;

■

(d) the *category, or categories*, of batteries that the producer intends to make available on the market for the first time within the territory of a Member State, namely portable batteries, industrial batteries, *LMT batteries*, electric vehicle batteries, or *SLI batteries, and their type*;

■

(f) information on how the producer meets its responsibilities set out in Article 47 and the requirements under *Articles 48, 48a and 49* respectively:

(i) for portable batteries *or LMT batteries*, the requirements of this point *(d)* shall be met by providing:

- *information in written form on* the measures put in place by the producer to attain the producer responsibility obligations set out in Article 47, the measures put in place to meet the separate collection obligations set out in *Articles 48(1) or 48a(1)* with regard to the amount of batteries the producer *makes available on the market in the Member State* and the system to ensure that the data reported to the competent authorities is reliable;

- where applicable, the name and contact details, including postal code and place, street and number, country, telephone, **web** address and e-mail address and the national identification code of the producer responsibility organisation entrusted by the producer to fulfil its extended producer responsibility obligations in accordance with **paragraphs 2 and 4 of Article 47a(2)**, including the trade register number or an equivalent official registration number **and** the European or national tax **identification** number of the producer responsibility organisation, and the represented producer's mandate;
- (ii) for **SLI batteries**, industrial **batteries** and electric vehicle batteries, the requirements of this point (f) shall be met by providing:
- **information in written form** on the measures put in place by the producer to attain the producer responsibility obligations set out in Article 47, the measures put in place to meet the collection obligations set out in Article 49(1) with regard to the amount of batteries the producer **makes available on the market in the Member State** and the system to ensure that the data reported to the competent authorities is reliable;

- where applicable, the ***name and contact details, including postal code and place, street and number, country, telephone, web address and e-mail address and the national identification code*** of the producer responsibility organisation entrusted by the producer to fulfil its extended producer responsibility obligations in accordance with paragraphs 2 and 4 of Article 47, including the trade register number or an equivalent official registration number ***and*** the European or national tax ***identification*** number of the producer responsibility organisation, and the represented producer's mandate.



- (g) a ***statement*** by the producer or, ***where applicable, producer's authorised representative or*** the producer responsibility organisation appointed in accordance with Article ***47a(1)***, stating that the information provided is true.

- 2d. ***Without prejudice to paragraph 2b, the information laid down in point (d) of that paragraph shall be provided either in the application for the registration under paragraph 2b or in the application for authorisation under Article 47b. In the latter case, the application for registration shall include at least information on either individual or collective fulfilment of the extended producer responsibility.***
- 2e. ***Member States may request additional information or documents, as necessary, to efficiently use the register referred to paragraph 1.***

- 2f. In the case that obligations under this Article are, on producer's behalf, met by an authorised representative for the EPR that represents more than one producer, in addition to the information required under paragraph 2, it shall provide separate indications of the name and the contact details of each one of the represented producers.**
- 2g. Member State may decide that the registration procedure pursuant to Article 46 and the authorization procedure pursuant to Article 47b constitute a single procedure, provided that the application meets the requirements set out in Article 46(2b) to (2f).**
3. The competent authority:
- (a) shall receive applications for the registration of producers referred to in paragraph **2b** via an electronic data-processing system the details of which shall be made available on the competent authorities' website;
  - (b) shall grant registrations and provide a registration number within a maximum period of *twelve* weeks from the moment that all the information laid down in *paragraphs 2, 2b and 2c* is provided;
  - (c) may lay down modalities with respect to the requirements and process of registration without adding substantive requirements to the ones laid down in *paragraphs 2, 2b and 2c*;
  - (d) may charge cost-based and proportionate fees to producers for the processing of applications referred to in paragraph 2.

- 3a. Competent authority may refuse or withdraw the producer's registration where the information outlined in paragraph 2b and related documentary evidence is not provided or is not sufficient or in case the producer no longer meets the requirements set in paragraph 2b.**
4. The producer, or, where applicable, **producer's authorised representative or** the producer responsibility organisation appointed ■ on behalf of the producers it represents shall without undue delay notify the competent authority of any changes to the information contained in the registration and of any permanent cessation as regards the making available on the market within the territory of the Member State of the batteries referred to in the registration in accordance with paragraph 2b(d). **A producer shall be excluded from the register if it has ceased to exist.**
- 4a. Where the information in the register of producers is not publicly accessible, Member States shall ensure that providers of online platforms allowing consumers to conclude distance contracts with producers are granted access, free of charge, to the information in the register.**

## Article 47

### Extended Producer Responsibility

1. Producers of batteries shall have extended producer responsibility for batteries that they make available on the market for the first time within the territory of a Member State ***that shall be in compliance with the requirements of Article 8 and Article 8a of Directive 2008/98/EC and of this Chapter.***
2. ***An economic operator making available on the market for the first time within the territory of a Member State a battery that results from preparing for reuse, preparing for repurpose, repurposing or remanufacturing operations shall be considered as the producer of such battery for the purpose of this Regulation and shall have an extended producer responsibility.***
3. ***A producer referred to in Article 2, point (37)(iv) shall appoint an authorised representative for the EPR in each Member State it sells batteries. Such appointment shall be by written mandate.***



4. *The financial contributions paid by the producer shall cover the following costs for the products that the producer makes available on the market in the Member State concerned:*

(a) *costs of separate collection of waste batteries and their subsequent transport and treatment, taking into account any revenues from preparing for re-use or preparing for repurpose or from the value of secondary raw material from recycled waste batteries;*

■

(b) ■ *costs of carrying out compositional survey of collected mixed municipal waste in accordance with Articles 48(12) and 48a(6);*

(c) *costs of providing information on prevention and management of waste batteries in accordance with Article 60;*

■

(d) *costs of data gathering and reporting to the competent authorities in accordance with Article 61.*

5. *In case of making available batteries that have been subject to preparing for re-use, preparing for repurpose, repurposing or remanufacturing, both the producers of the original batteries and the producers of batteries that are placed on the market as a result of the abovementioned operations, may establish and adjust a cost sharing mechanism based on the actual attribution of the costs between the different producers, to share the costs referred to in paragraph 4(a), (c) and (d). Where a battery, in accordance with paragraph 2, is subject to more than one extended producer responsibility, the first producer making that battery available on the market shall not bear additional costs as a result of such mechanism. The Commission shall facilitate the exchange of information and sharing of best practices among Member States on such cost sharing mechanisms.*

*Article 47a*

*Producer Responsibility Organisation*

1. Producers may entrust a producer responsibility organisation authorised in accordance with *Article 47b* to carry out the extended producer responsibility obligations on their behalf. *Member States may adopt measures to make the entrustment of a producer responsibility organisation mandatory. Such measures shall be justified on the basis of the specific characteristics of a certain category of batteries placed on the market and related waste management characteristics.*

2. In the case of a collective **fulfilment** of extended producer responsibility **obligations**, producer responsibility organisations shall ensure that the financial contributions paid to them by producers:
- (a) are modulated **in accordance with the requirements laid down in point (b) of paragraph 4 of Article 8a Directive 2008/98/EC and**, as a minimum by battery **category** and battery chemistry and, taking into account **as appropriate** the rechargeability, the level of recycled content in the manufacture of batteries **and the fact that the batteries were subject to preparing for reuse, preparing for repurpose, repurposing or remanufacturing, and their carbon footprint**;
  - (b) are adjusted to take account of any revenues by the producer responsibility organisations from **preparing for reuse or preparing for repurposing or from the value** of secondary raw materials from **recycled** waste batteries;
  - (c) ensure equal treatment of producers regardless of their origin or size, without placing disproportionate burden on producers, including small and medium sized enterprises, of small quantities of batteries.

3.

Where, in the territory of a Member State, multiple producer responsibility organisations are authorised to fulfil extended producer responsibility obligations on behalf of producers, they shall ensure a coverage across the whole territory of the Member State of the activities *in accordance with Articles 48(1), 48a(1) and 49(1)*. Member States shall entrust the competent authority or appoint an independent third party to oversee that producer responsibility organisations fulfil their obligation *in coordinated manner*.

4. Producer responsibility organisations shall ensure the confidentiality of the data in its possession as regards proprietary information or information directly attributable to individual producers or their authorised representatives.

5. *In addition to the information referred to in point (e) of paragraph 3 of Article 8a of Directive 2008/98/EC*, producer responsibility organisations shall publish on their websites *at least* each year, subject to commercial and industrial confidentiality, *the information on the rate of separate collection of waste batteries, recycling efficiencies and levels of recovered materials achieved by the producers which entrusted the producer responsibility organisation*.

6. *In addition to information referred to in paragraph 5, producer responsibility organisations shall make publicly available information on the selection procedure for waste management operators referred to in Article 47a(8).*

7. Where necessary to avoid distortion of the internal market, the Commission is empowered to adopt an implementing act laying down criteria for the application of paragraph 2(a). That implementing act cannot concern the precise determination of the level of the contributions and shall be adopted in accordance with the examination procedure referred to in Article 74(3).

8. *Waste management operators referred to in Article 48(2a), 48a(5), Article 49(4), Article 50(3), Article 52(1), Article 53(2) and Article 54 shall be subject to a non-discriminatory selection procedure, based on transparent award criteria, by producer responsibility organisations, without placing disproportionate burden on small and medium sized enterprises.*

*Article 47b*

*Authorisation on fulfilment of extended producer responsibility*

- 1. A producer, in the case of individual fulfilment of extended producer responsibility obligations, and producer responsibility organisations appointed in the case of collective fulfilment of extended producer responsibility obligations, shall apply for an authorisation from the competent authority.*
  
- 2. The authorisation shall be granted only where it is demonstrated that:*
  - (a) requirements laid down in points (a) to (d) of paragraph 3 of Article 8a of the Directive 2008/98/EC are complied with and the measures put in place by the producer or producer responsibility organisation are sufficient to meet the obligations set out in this Chapter with regard to the amount of batteries made available on the market for the first time within the territory of a Member State by the that producer or that producers on whose behalf the producer responsibility organisation acts; and.*
  
  - (b) where it is demonstrated, by providing documentary evidence, that the requirements of paragraphs 1, 2 and 3 of Article 48 or requirements of paragraphs 1, 2 and 4 of Article 48a are met and that all the arrangements are in place to allow attaining and maintaining durably at least the collection target referred to in Article 48(4) and Article 48a(3), respectively.*

3. *Member State shall, in its measures laying down administrative and procedural rules referred to in Article 45g(2)(b), include the details of the authorisation procedure, which can be different for either individual or collective fulfilment of the extended producer responsibility, and the modalities for verifying compliance, including the information to be provided by producers or producers responsibility organisations to that end. The authorisation procedure shall include requirement on the verification of the arrangements put in place to ensure compliance with the requirements laid down in paragraphs 1 and 2 of Article 48 and paragraphs 1, 2 and 4 of Article 48a, and timeframes for this verification, which shall not exceed twelve weeks from the submission of a complete application dossier. This verification may be done by an independent expert that shall issue a verification report on the result of verification.*
4. *The producer or the producer responsibility organisations shall notify the competent authority without undue delay of any changes to the information contained in the authorisation, of any changes that concern the terms of the authorisation or of the permanent cessation of operations.*

5. *The self-control mechanism provided in point (d) of paragraph 3 of Article 8a of Directive 2008/98/EC shall be carried out regularly, and at least every three years, and upon request by the competent authority, in order to verify that the provisions in point (d) of paragraph 3 of Article 8a of Directive 2008/98/EC are complied with and the conditions for authorisation referred to in paragraph 2 of this Article continue to be met. The producer or the producer responsibility organisation shall, upon request, present the self-control report and, where necessary, the draft corrective action plan to the competent authority. Without prejudice to the competencies under paragraph 6 of this Article, the competent authority may make observations on the self-control report and on the draft corrective action plan, and, if any, shall communicate them to the producer or the producer responsibility organisation. The producer or the producer responsibility organisation shall draw up and implement the corrective action plan in accordance with those observations.*
6. *The competent authority may on its own discretion decide to revoke the relevant authorisation if collection targets set out in Article 48(4) or Article 48a(3) are not met or the producer or producer responsibility organisation no longer fulfils the requirements with regard to the organisation of the collection and treatment of waste batteries or fails in relation to reporting to the competent authority or notification of any changes that concern the terms of the authorisation, or has ceased operations.*



7. *A producer, in the case of individual fulfilment of extended producer responsibility obligations, and producer responsibility organisations appointed in the case of collective fulfilment of extended producer responsibility, shall provide a guarantee intended to cover the costs related to waste management operations due by the producer, or the producer responsibility organisation, in case of non-compliance with the extended producer responsibility obligations, including in case of permanent cessation of its operations or insolvency. Member state may specify additional requirements on this guarantee. In case of State run producer responsibility organisation, such guarantee may not be provided by the organisation itself and may have the form of a public fund, financed by producers' fees, for which the Member State running the organisation is jointly and severally liable.*

#### Article 48

##### Collection of waste portable batteries

1. Producers or, where appointed in accordance with Article *47a(1)*, producer responsibility organisations **■**, shall ensure the *separate* collection of all waste portable batteries, regardless of their nature, *chemical composition, condition*, brand or origin, in the territory of a Member State where they make batteries available on the market for the first time. For that purpose they shall:
- (a) establish waste portable battery *take-back and collection systems, which include* collection points;

- (b) offer the collection of waste portable batteries, free of charge, to the entities referred to in paragraph 2(a) and provide for the collection of waste portable batteries from all entities that have made use of that offer (“connected collection points”);
- (c) provide for the necessary practical arrangements for collection and transport, including the provision, free of charge, of suitable collection and transport containers meeting the requirements of Directive **2008/68/EC**<sup>58</sup> to the connected collection points;
- (d) ensure the collection, free of charge, of the waste portable batteries collected by the connected collection points, with a frequency that is proportionate to the area covered and the volume and hazardous nature of the waste portable batteries usually collected through those collection points;
- (da) ensure the collection, free of charge, of the waste portable batteries removed from waste electrical and electronic equipment, with a frequency that is proportionate to the volume and hazardous nature of the waste portable batteries;**
- (e) ensure that the waste portable batteries collected from the connected collection points **and removed from waste electrical and electronic equipment** are subsequently subject to treatment ■ in a permitted facility by a waste management operator in accordance with Article 56.

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<sup>58</sup> **Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13)**

2. Producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations ■, shall ensure that the **take-back and collection system for waste portable batteries**:
- (a) consists of collection points provided by them in cooperation with **one or more of the following**:
    - (i) distributors in accordance with Article 50;
    - (ii) ■ end-of-life vehicle treatment ■ facilities in accordance with Article 52;
    - (iii) public authorities or third parties carrying out waste management on their behalf in accordance with Article 53;
    - (iv) voluntary collection points in accordance with Article 54;
    - (v) **waste electrical and electronic equipment treatment facilities in accordance with Directive 2012/19/EC.**
  - (b) covers the whole territory of the Member State taking into account population size, expected volume of waste portable batteries, accessibility and vicinity to end-users, not being limited to areas where the collection and subsequent management of waste portable batteries is profitable.

3. End users ***shall be able to discard*** waste portable batteries at collection points referred to in paragraph 2 ***and*** shall not be charged or be obliged to buy a new battery ***or to have bought the battery from the producers who set up the collection points.***
4. Producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations ■, shall attain, and maintain durably, at least the following collection targets of waste portable batteries ■, made available on the market for the first time in a Member State by the respective producer or collectively by the producers covered by a producer responsibility organisation:
  - (a) 45 % by 31 December 2023;
  - (b) **63 %** by 31 December **2027**;
  - (c) **73%** by 31 December 2030.

Producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations ■, shall calculate the collection rate referred to in this paragraph in accordance with Annex XI.

5. Collection points set up in accordance with paragraphs 1 and ***points (i), (iii) and (iv) of*** paragraph 2(a) shall not be subject to the registration or permit requirements of Directive 2008/98/EC.
6. ***Member State may adopt measures to require that the collection points mentioned in paragraph 2 may collect waste portable batteries only if they have concluded a contract with the producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations.***

7. Every five years the Member States shall carry out a compositional survey of collected mixed municipal waste and waste electric and electronic equipment streams to determine the share of waste portable batteries therein. The first survey shall be carried out by *1 January of the year 24 months after the date of entry into force of this Regulation*. On the basis of the information obtained, the competent authorities may require, that the producers of portable batteries or producer responsibility organisations take corrective action to increase their network of connected collection points and carry out information campaigns in accordance with Article 60(1).
8. *Due to the expected development of the market and increase of the estimated lifetime of rechargeable portable batteries, in order to better capture the actual volume of portable batteries waste available for collection, the Commission shall be empowered to adopt, by 48 months after entry into force of the Regulation delegated acts in accordance with Article 73 to amend the methodology to calculate the collection rate of portable batteries laid down in Annex XI and amend the target laid down in paragraph 4 to adapt the rate to the new methodology while maintaining equivalent ambition and timelines.*

*Article 48a*

*Collection of waste LMT batteries*

- 1. Producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations, shall ensure the collection of all LMT batteries, regardless of their nature, chemical composition, condition, brand or origin, in the territory of a Member State where they make batteries available on the market for the first time. For that purpose they shall:**
- (a) establish waste LMT battery take back and collection systems, which include collection points;**
  - (b) offer the collection of waste LMT batteries, free of charge, to the entities referred to in paragraph 2(a) and provide for the collection of waste LMT batteries from all entities that have made use of that offer ("connected collection points");**
  - (c) provide for the necessary practical arrangements for collection and transport, including the provision, free of charge, of suitable collection and transport containers meeting the requirements of Directive 2008/68/EC<sup>59</sup> to the connected collection points;**

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<sup>59</sup> *Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13)*

- (d) ensure the collection, free of charge, of the waste LMT batteries collected by the connected collection points, with a frequency that is proportionate to the area covered and the volume and hazardous nature of the waste LMT batteries usually collected through those collection points;*
- (e) ensure that the waste LMT batteries collected from the connected collection points and removed from waste electrical and electronic equipment are subsequently subject to treatment in a permitted facility by a waste management operator in accordance with Article 56.*

**2. Producers or, where appointed in accordance with Article 47(247a(1), producer responsibility organisations acting on their behalf, shall ensure that the network of connected take back and collection points system for waste LMT battery :**

- (a) consists of collection points provided by them in cooperation with one or more of the following:*
  - (i) distributors in accordance with Article 50;*
  - (ii) end-of-life vehicle treatment facilities in accordance with Article 52;*
  - (iii) public authorities, or third parties carrying out waste management on their behalf, in accordance with Article 53;*

*(iv) voluntary collection points in accordance with Article 54;*

*(v) waste electrical and electronic equipment treatment and recycling facilities in accordance with Directive 2012/19/EC.*

*(b) covers the whole territory of the Member State taking into account population size, expected volume of waste LMT batteries, accessibility and vicinity to end-users, not being limited to areas where the collection and subsequent management of waste LMT batteries is profitable.*

*3. End -users, when discarding waste LMT batteries at collection points referred to in paragraph 2, shall not be charged or be obliged to buy a new battery or to have bought the battery from the producers who set up the collection points.*

*Producers or, where appointed in accordance with Article 47a(2), producer responsibility organisations, shall attain, and maintain durably, at least the following collection targets of waste LMT batteries:*

*51% by 31 December 2028*

*61% by 31 December 2031*

*Producers or producer responsibility organisations shall calculate the collection rate referred to in this paragraph in accordance with Annex XI.*



4. ***Producers of LMT batteries or producer responsibility organisations, shall:***
- (a) ***provide the collection points referred to in paragraph 1 with suitable collection infrastructure for the separate collection of waste LMT batteries meeting the applicable safety requirements and cover the necessary costs incurred by those collection points in relation to the take back activities. The containers for collection and temporary storage of such waste batteries at the collection points shall be adequate to provide for the volume and hazardous nature of waste LMT batteries that are likely to be collected through those collection points;***
  - (b) ***collect waste LMT batteries from the collection points referred to in paragraph 1 with a frequency that is proportionate to the storage capacity of the separate collection infrastructure and the volume and hazardous nature of waste batteries that are usually collected through those collection points;***
  - (c) ***provide for the delivery of waste LMT batteries collected from end-users and from the collection points referred to in paragraph 1 to facilities for treatment in accordance with Article 56.***
5. ***Collection points set up in accordance with paragraphs 1 and points (i), (iii) and (iv) of paragraph 2(a) shall not be subject to the registration or permit requirements of Directive 2008/98/EC.***

6. *Member State may adopt measures to require that the collection points mentioned in paragraph 2 may collect waste LMT batteries only if they have concluded a contract with the producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations.*
7. *In the compositional survey carried out in accordance with Article 48(7) Member States shall determine the share of waste LMT batteries in the collected mixed municipal waste. On the basis of the information obtained, the competent authorities may require that the producers of LMT batteries or producer responsibility organisations take corrective action to increase their network of connected collection points and carry out information campaigns in accordance with Article 60(1).*
8. *Due to the expected development of the market and increase of the estimated lifetime of LMT batteries, in order to better capture the actual volume of waste LMT batteries available for collection, the Commission shall be empowered to adopt, by 48 months after entry into force of the Regulation, delegated acts in accordance with Article 73 to amend the methodology to calculate the collection rate of waste LMT batteries laid down in Annex XI and amend the target laid down in paragraph 3, accordingly.*

## Article 49

### Collection of waste *SLI* batteries, industrial batteries and electric vehicle batteries

1. Producers of *SLI* batteries, industrial batteries and electric vehicle batteries or, where appointed in accordance with Article 47a(1), producer responsibility organisations, shall take back, free of charge and without an obligation on the end-user to buy a new battery, nor to have bought the battery from them, **and collect** all waste *SLI* batteries, industrial batteries and electric vehicle batteries **regardless of their nature, chemical composition, condition, brand, or origin** of the respective *category* that they have made available on the market for the first time in the territory of that Member State. For that purpose they shall accept to take back waste *SLI* batteries, industrial batteries and electric vehicle batteries from end-users, or from **take back and collection systems which include** collection points provided in cooperation with:
  - (a) distributors of *SLI batteries*, industrial *batteries* and electric vehicle batteries in accordance with Article 50(1);
    - (aa) **operators carrying out re-use, remanufacturing or repurposing of *SLI* batteries, industrial batteries and electric vehicle batteries;**
  - (b) waste electrical and electronic equipment and end-of-life vehicle treatment facilities referred to in Article 52 for the waste *SLI batteries*, industrial *batteries* and electric vehicle batteries arising from their operations;

- (c) public authorities or third parties carrying out waste management on their behalf in accordance with Article 53.

*Member State may adopt measures to require that the entities referred to in points (a), (b) and (c) of the first subparagraph may collect waste SLI batteries, industrial batteries and electric vehicle batteries only if they have a contract with the producers or their producer responsibility organisations.*

Where waste industrial batteries require prior dismantling at the premises of private, non-commercial users, the obligation of the producer to take back those *waste* batteries shall *not result in any costs related to the dismantling and collection of those* waste batteries *being borne by* those users.

2. The take back arrangements put in place in accordance with paragraph 1 shall cover the whole territory of a Member State taking into account population size and density, expected volume of waste *SLI batteries*, industrial *batteries* and electric vehicle batteries, accessibility and vicinity to end-users, not being limited to areas where the collection and subsequent management of waste *SLI batteries*, industrial *batteries* and electric vehicle batteries is most profitable.

3. Producers of **SLI** batteries, industrial batteries and electric vehicle batteries or, where appointed in accordance with Article **47a(1)**, producer responsibility organisations, shall:
- (a) provide the **take back and collection systems** referred to in paragraph 1 with suitable collection infrastructure for the separate collection of waste **SLI** batteries, industrial batteries and electric vehicle batteries meeting the applicable safety requirements and cover the necessary costs incurred by those **take back and collection systems** in relation to the take back activities. The containers **for collection and temporary storage of such waste** batteries at the **take back and collection systems** shall be adequate to provide for the volume and hazardous nature of waste **SLI** batteries, industrial batteries and electric vehicle batteries that are likely to be collected through those collection points;
  - (b) collect waste **SLI** batteries, industrial batteries and electric vehicle batteries from the **take back and collection systems** referred to in paragraph 1 with a frequency that is proportionate to the storage capacity of the separate collection infrastructure and the volume and hazardous nature of waste batteries that are usually collected through those **take back and collection systems**;
  - (c) provide for the delivery of waste **SLI** batteries, industrial batteries and electric vehicle batteries collected from end-users and from the **take back and collection systems** referred to in paragraph 1 to facilities for treatment ■ in accordance with Article 56 **and Article 59**.

4. The entities referred to in points (a), (b) and (c) of paragraph *1* may hand over collected waste *SLI* batteries, industrial batteries and electric vehicle batteries to authorised waste management operators *referred to in Article 47a(8) for treatment* in accordance with Article 56. In such cases, the obligation of producers pursuant to paragraph 3(c) shall be deemed to be met.

## Article 50

### Obligations of distributors

1. Distributors shall take back waste batteries from the end-user *free of charge* and without an obligation *on the end-user* to buy *or to have bought* a new battery, regardless of their chemical composition, *brand* or origin. Take back for *waste* portable batteries shall be provided at or in the immediate vicinity of their retail outlet. Take back for waste *LMT batteries, SLI* batteries, industrial batteries and electric vehicle batteries shall be provided at or in the vicinity of their retail outlet. This obligation is limited to the *categories* of waste batteries which the distributor has, or had, as new batteries in its offer and, for *waste* portable batteries, to the quantity that *non-professional* end-users normally discard.
2. The take back obligation laid down in paragraph 1 does not apply to waste products containing batteries. ■

3. Distributors shall hand over waste batteries that they have taken back to the producers or producer responsibility organisations who are responsible *to ensure* the collection of those batteries in accordance with Articles 48, **48a** and 49 respectively, or to an waste management operator *referred to in Article 47a(8)* with a view to their treatment **■** in accordance with *the requirements of* Article 56.
4. The obligations under this article shall apply *mutatis mutandis to distributors* **■** supplying batteries by means of distance contracts to end -users. Those *distributors* shall provide for a sufficient number of collection points covering the whole territory of a Member State and taking into account population size and density, expected volume of, *respectively*, waste *portable batteries, LMT batteries, SLI batteries*, industrial *batteries* and electric vehicle batteries, accessibility and vicinity to end -users allowing end -users to return batteries.
  - 4a. *In the case of sales with delivery, distributors shall offer to take back waste portable batteries, LMT batteries, industrial batteries, SLI batteries and electric vehicle batteries free of charge at the point of delivery to the end-user or at a local collection point. The end-user shall be informed of the arrangements for taking back of a waste battery when ordering a battery.*

- 4b. For the purpose of compliance with Article 30, paragraph 1, points (d) and (e), of Regulation (EU) 2022/2065, providers of online platforms, falling within the scope of Section 4 of Chapter 3 of Regulation (EU) 2022/2065, allowing consumers to conclude distance contracts with producers shall obtain the following information from producers offering batteries, including those incorporated in appliances, light means of transport or vehicles, to consumers located in the Union:**
- (a) information on the register of producers referred to in Article 46 of this Regulation and its registration number(s) in that register;**
  - (b) a self-certification by the producer committing to only offer batteries, including those incorporated in appliances, light means of transport or vehicles, with regard to which the extended producer responsibility requirements referred to in Article 47(1), (2), (3) and (4), Article 47a(1) and Article 47b(1), (2) and (7), of this Regulation are complied with.**

#### **Article 50a**

##### **Deposit return systems for batteries**

**By 31 December 2027, the Commission shall assess the feasibility and potential benefits of establishment of deposit return systems for batteries, in particular for portable batteries of general use. To that end, the Commission shall submit a report to the European Parliament and to the Council and consider taking appropriate measures, including the adoption of legislative proposals.**



## Article 51

### Obligations of *end-users*

1. *End-users* shall discard waste batteries separately from other waste streams, including from mixed municipal waste.
2. *End-users* shall discard waste batteries in designated separate collection points set up by or in accordance with the specific arrangements concluded with the producer or a producer responsibility organisation, in accordance with Articles 48, **48a** and 49.

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*Producers or producer responsibility organisations shall set up awareness campaigns or offer incentives to encourage end-users to discard waste batteries in a manner compliant with the information to end-users on prevention and management of waste batteries in Article 60(1).*

## Article 52

### Obligations of treatment facilities

1. Operators of waste treatment facilities subject to Directives 2000/53/EC *or* 2012/19/EU shall hand over waste batteries resulting from the treatment of end-of-life vehicles *or* waste electrical and electronic equipment to the producers of the relevant *category of* batteries or, where appointed in accordance with Article 47a(1), producer responsibility organisations, *or to waste management operators referred to in Article 47a(8)* with a view to their treatment ■ in accordance with the requirements of Article 56.
2. *The operators of waste treatment facilities referred to in paragraph 1 shall keep records of those transactions.*

## Article 53

### Participation of public waste management authorities

1. Waste batteries originating from private, non-commercial *end-users* may be discarded in separate collection points set up by public waste management authorities.

2. Public waste management authorities shall hand over collected waste batteries to the producers or, where appointed in accordance with Article *47a(1)*, to producer responsibility organisations ■ , or to waste management operators *referred to in Article 47a(8)* with a view to *their treatment* of those waste batteries in accordance with the requirements of Article 56, or carry out their treatment ■ themselves in accordance with the requirements of Article 56.

## Article 54

### Participation of voluntary collection points

1. Voluntary *collection points for waste portable batteries* shall *handover collected* waste portable batteries to- the producers of portable batteries or third parties acting on their behalf, including producer responsibility organisations, or to waste management operators *referred to in Article 47a(8)* with a view to their treatment ■ in accordance with the requirements of Article 56.
2. *Voluntary collection points for waste LMT batteries shall handover collected waste LMT batteries to- the producers of LMT batteries or third parties acting on their behalf, including producer responsibility organisations, or to waste management operators referred to in Article 47a(8) with a view to their treatment in accordance with the requirements of Article 56.*

*Article 54a*

*Restrictions regarding hand over of waste portable batteries and waste LMT batteries*

- 1. Member States may restrict the possibility of distributors, operators of waste treatment facilities referred to in Article 52, public waste management authorities referred to in Article 53 and voluntary collection points referred to in Article 54 to hand over collected waste portable batteries and waste LMT batteries either to producers or producer responsibility organisations, or to a waste management operator to carry out treatment in accordance with Article 56. Member States shall ensure that such restrictions do not have an adverse impact on the collection and recycling systems.*
- 2. Member States may also adopt measures allowing the possibility for public waste management authorities referred to in Article 53(1) to carry out their treatment in accordance with Article 56 themselves.*

Article 55

***Obligations for Member States regarding collection rates for waste portable and waste LMT batteries***

1. Member States shall ***adopt the necessary measures for the achievement by producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations, of the collection targets laid down in Article 48(4), first subparagraph, points (a) to (c), with respect to waste portable batteries, and laid down in Article 48a(3), first indent, with respect to waste LMT batteries, calculated in accordance with Annex XI.***

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2. *In particular, Member States shall regularly, at least once a year, monitor producers' or, where appointed in accordance with Article 47a(1), producer responsibility organisations' collection rates to verify that they have taken adequate measures to achieve the collection targets laid down in Article 48(4), first subparagraph, points (a) to (c) with respect to waste portable batteries, and laid down in Article 48a(3), first indent with respect to waste LMT batteries, calculated in accordance with Annex XI. The monitoring shall be based in particular on the information reported to the competent authorities in accordance with Article 61, including the verification of that information, the verification of compliance with the calculation methodology set out in Annex XI and the results of the compositional survey referred to in paragraph 2 and any other information available to the Member State.*
  
3. *Where, on the basis of the monitoring referred to in paragraph 2, a Member State finds that a producer or, where appointed in accordance with Article 47a(1), a producer responsibility organisation, has not taken measures consistent with the achievement of the collection targets laid down in Article 48(4), first subparagraph, points (a) to (c), with respect to waste portable batteries, and laid down in Article 48a(3), first indent, with respect to waste LMT batteries, it shall require that producer or producer responsibility organisation to take appropriate corrective actions ensuring that it can achieve the targets set out in Article 48(4), first subparagraph, points (a) to (c), or in Article 48a(3), first indent, as applicable.*

4. *Without prejudice to the self-control mechanism under Art 47b(5), the producer or producer responsibility organisation shall present a draft corrective action plan to the competent authority within three months of the request by the competent authority referred to in paragraph 3, which may make observations on the draft plan, and, if any, shall communicate them to the producer or the producer responsibility organisation within one month after reception of the draft corrective plan.*

*When the competent authority makes its observation known, the producer or the producer responsibility organisations shall draw up the corrective action plan, in accordance with such observation within one month of the reception of the observations by the competent authority and shall implement it accordingly. The content of the corrective action plan and the compliance with it by the producer or the producer responsibility organisation shall be taken into account when evaluating whether the conditions for the authorisation continue to be met.*

5. *Every five years, Member States shall carry out a compositional survey of collected mixed municipal waste and waste electric and electronic equipment streams to determine the share of waste portable batteries and waste LMT batteries therein. The first survey shall be carried out by 1 January ... [of the year after 24 months after the date of entry into force of this Regulation] for the preceding calendar year. On the basis of the information obtained, the competent authorities may require, that the producers of portable batteries, producers of LMT batteries or producer responsibility organisations take corrective action to increase their network of connected collection points and carry out information campaigns in accordance with Article 60(1).*

## Article 56

### Treatment ▯

1. Collected waste batteries shall not be *disposed of or be the subject of an energy recovery operation*.
2. Without prejudice to Directive 2010/75/EU, permitted facilities shall ensure that all treatment *operations* for waste batteries comply, as a minimum, with Part A of Annex XII and with best available techniques as defined in Article 3(10) of Directive 2010/75/EU.
3. ▯ Where batteries are collected while still incorporated *into an end-of-life vehicle, in a waste light mean of transport*, in a waste appliance, *a waste light mean of transport or an end-of-life vehicle*, they shall be removed from the collected waste appliance, *waste light means of transport or end-of-life vehicle* in accordance with, *where applicable*, the requirements laid down in Directive *2000/53/EC or 2012/19/EU*.
4. The Commission is empowered to adopt delegated acts in accordance with Article 73 to amend the treatment ▯ requirements for waste batteries laid down in Part A of Annex XII in light of technical and scientific progress and emerging new technologies in waste management.
  - 4a. *Member States may set up incentive schemes for economic operators that achieve higher yields than the respective thresholds set out in Parts B and C of Annex XII.*



## Article 57

### Recycling efficiencies and material recovery targets

1. ***Permitted facilities shall ensure that all waste batteries made available to that facility will be accepted and undergo preparation for reuse, preparation for repurposing or recycling.***
2. Recyclers shall ensure that **■ recycling ■** shall achieve the minimum recycling efficiencies and the levels of recovered materials laid down, respectively, in Parts B and C of Annex XII.
3. The recycling efficiencies and the recovery of materials laid down in Parts B and C of Annex XII shall be calculated in accordance with the rules laid down in an implementing act adopted pursuant to paragraph 4.
4. The Commission shall, by ***18 months after entry into force of the Regulation***, adopt ***a delegated act in accordance with Article 73 to supplement this Regulation by establishing the methodology for calculation and verification of recycling efficiencies and recovery of material, in accordance with the essential elements set out in Annex XII, and the format for the documentation.***

5. *By 36 months after entry into force of the Regulation and at least every five years thereafter, the Commission shall assess whether, due to the developments in the market, in particular battery technologies impacting the type of materials recovered and existing and forecasted availability of cobalt, copper, lead, lithium or nickel or the lack thereof, and in view of technical and scientific progress, it is appropriate to revise the recycling efficiencies and the recovery of materials laid down in* ■ *Parts B and C of Annex XII.*

*Where justified and appropriate on the basis of that assessment, the Commission shall be empowered to adopt a delegated act in accordance with Article 73 to amend the recycling efficiencies and the recovery of materials laid down in Parts B and C of Annex XII.*

5a. *Where appropriate due to market developments impacting the type of materials that can be recovered and in light of technical and scientific progress, including emerging new technologies in waste management, the Commission shall be empowered to adopt delegated acts in accordance with Article 73, to amend Annex XII, Part C of this Regulation by adding further materials with specific levels of recovered material per specific material, and Annex XII, Part B of this Regulation by adding further battery chemistries with specific levels of minimum recycling efficiency.*

## Article 58

### Shipments of waste batteries

1. Treatment **■** may be undertaken outside the Member State concerned or outside the Union, provided that the shipment of waste batteries, *or fractions thereof*, is in compliance with Regulation (EC) No 1013/2006 and Regulation (EC) No 1418/2007.

*In order to distinguish between used batteries and waste batteries, shipments of used batteries suspected to be waste may be inspected by Member States for compliance with the minimum requirements in Annex XIV and monitored accordingly.*

*When it has been established by the competent authorities in Member States that an intended shipment of used batteries consists of waste batteries, the costs of appropriate analyses and inspections, including storage costs, of used batteries suspected to be waste may be charged to the producers, to third parties acting on their behalf or to other persons arranging the shipment of used batteries suspected to be waste. The Commission is empowered to adopt delegated acts, in accordance with Article 73 of this Regulation, supplementing the minimum requirements in Annex XIV, in particular on the state of health, to distinguish between the shipment of used batteries and waste batteries.*

2. Waste batteries, *or fractions thereof*, exported out of the Union in accordance with paragraph 1 shall only count towards the fulfilment of obligations, efficiencies and targets set out in Article 56 and Article 57 if the *exporter of the waste batteries, or fractions thereof*, for treatment *provides documentary evidence approved by the competent authority of destination* that the treatment took place in conditions that are equivalent to the requirements of this Regulation *and to human health and environmental protection requirements laid down in other Union legislation*.
3. The Commission is empowered to adopt a delegated act, in accordance with Article 73, laying down detailed rules supplementing those in paragraph 2 of this Article, by laying down the criteria for the assessment of equivalent conditions.

#### Article 59

*Preparing for re-use, preparing for repurpose of waste LMT batteries, waste industrial batteries and waste electric vehicle batteries*



4. In order to document that a waste *LMT* battery, ***industrial battery and electric vehicle battery*** subject to ***preparing for re-use, or preparing for repurpose***, is no longer waste, the battery holder shall demonstrate the following upon request by a competent authority:
- (a) evidence of state of health evaluation or testing carried out in a Member State in the form of a copy of the record confirming the capability of the battery to deliver the performance relevant for its use following a ***preparing for re-use, or preparing for repurpose***;
  - (b) further use of the battery that ***has been*** subject to ***preparing for re-use, or preparing for repurpose***, is documented by means of an invoice or a contract for the sale or transfer of ownership of the battery;
  - (c) evidence of appropriate protection against damage during transportation, loading and unloading, including through sufficient packaging and appropriate stacking of the load.
5. Information referred to in **■** point (a) of paragraph 4 shall be made available to end -users and third parties acting on their behalf, on equal terms and conditions, as part of the **■** documentation accompanying the ***battery referred to in paragraph 5*** when placed on the market or put into service.

6. The provision of information in accordance with paragraphs 1, 2, **4 and 5** shall be without prejudice to preserving the confidentiality of commercially sensitive information in conformity with the relevant Union and national law.
7. The Commission is empowered to adopt implementing acts establishing detailed technical **and verification** requirements that **waste LMT batteries, waste industrial batteries or waste electric vehicle batteries have to fulfil to cease to be waste. This** implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).

## Article 60

### ■ Information *on prevention and management of waste batteries*

1. ***In addition to the information referred to in paragraph 2 of Article 8a of Directive 2008/98/EC***, Producers or, where appointed in accordance with Article **47a(1)**, producer responsibility organisations ■ shall make available to end -users and distributors the following information regarding the prevention and management of waste batteries with respect to the **categories** of batteries that the producers supply within the territory of a Member State:
  - (a) the **role of end-users in contributing** to waste prevention, including by information on good practices **and recommendations** concerning the use of batteries aiming at extending their use phase and the possibilities of **re-use, preparing for re-use, preparing for repurpose, repurposing and remanufacturing**;

- (b) the role of *end-users* in contributing to the separate collection of waste batteries in accordance with their obligations under Article 51 so as to allow their treatment;
- (c) the separate collection, *take-back and collection points, preparing* for re-use, *preparing for repurposing*, and recycling *operations* available for waste batteries;
- (d) the necessary safety instructions to handle waste batteries, including in relation to the risks associated with, and the handling of, batteries containing lithium;
- (e) the meaning of the labels and symbols *marked* on batteries *in accordance with Article 13 or printed* on their packaging *or in the documents accompanying batteries*;
- (f) the impact of substances, *in particular hazardous substances*, contained in batteries on the environment and on human health *or safety of persons*, including impact due to inappropriate discarding of waste batteries such as littering or discarding as unsorted municipal waste.

This information shall be made available

- (a) in regular time intervals for each model from the moment the battery model concerned is being made available on the market for the first time in a Member State as a minimum at the point of sale in a visible manner and through online marketplaces;

- (b) in a language *or languages*, which can be easily understood by **■** end-users, as determined by the Member State *in which the battery is to be made available on the market*.
2. Producers shall make available to distributors and operators referred to in Articles 50, 52 and 53 and other waste management operators carrying out *preparing for re-use*, preparing for *repurpose, and treatment*, information regarding the safety and protective measures, including on occupational safety, applicable to the storage and collection of waste batteries.
3. From the moment that a battery **■** is supplied within the territory of a Member State producers shall make available electronically, *free of charge and* upon request, to waste management operators carrying out *preparing for re-use*, preparing for *repurposing, and treatment*, as far as it is needed by those operators to carry out those activities, the following battery model specific information regarding the proper and environmentally sound treatment of waste batteries:
- (a) the processes to ensure the dismantling of *light means of transport*, vehicles and appliances in a way that allows the removal of incorporated batteries;
- (b) the safety and protective measures, including on occupational safety *and fire protection*, applicable to the storage, transport, *and treatment* processes for waste batteries.



That information shall identify the components and materials, and the location of all hazardous substances in a battery, as far as it is needed by operators carrying out ***preparing for re-use***, preparing for ***repurposing, and treatment*** activities in order to enable them to comply with the requirements of this Regulation.

That information shall be made available in a language ***or languages***, which can be easily understood by the operators mentioned in the first subparagraph, as determined by the Member State ***on whose market the battery is to be made available***.

4. Distributors that supply batteries to end-users shall ***permanently*** provide in their retail premises ***in an easily accessible and clearly*** visible manner ***for the end-users of the battery***, the information listed in paragraph 1 and 2, and information on how the end users may return waste batteries free of charge to the respective collection points established at retail outlets or on behalf of a marketplace. That obligation shall be limited to the types of batteries which the distributor or retailer has, or had, as new batteries in its offer.  
***Distributors shall provide the information listed in paragraphs 1 and 2 also when they sell their products through online platforms allowing consumers to conclude distance contracts with traders.***
5. The costs covered by the producer under Article 47(1)(e) shall be shown separately to the end-user at the point of sale of a new battery. ■

Where information is provided publicly to *end-users* under this Article, the confidentiality of commercially sensitive information in conformity with the relevant Union and national law shall be preserved.

## Article 61

### *Minimum requirements for reporting to the competent authorities*

1. Producers of portable batteries *and producers of LMT batteries* or, where appointed in accordance with Article 47a(1), producer responsibility organisations shall report to the competent authority, *at least*, for each calendar year the following information according to *chemistries and categories of waste batteries*:
  - (a) the amount of portable batteries *or LMT batteries* made available on the market for the first time in the territory of a Member State, excluding batteries that have left the territory of that Member State in that year, before being sold to *end-users*;
    - (aa) *the amount of portable batteries of general use made available on the market for the first time in the territory of a Member State, excluding any portable batteries of general use that have left the territory of that Member State in that year before being sold to end users*;
  - (b) the amount of waste portable batteries *or waste LMT batteries* collected in accordance with *Articles 48 and 48a, respectively*;

- (c) the collection *rate* reached by the producer or producer responsibility organisation acting on behalf of their members *for waste portable batteries or waste LMT batteries*;
  - (d) the amount of collected waste portable batteries *or waste LMT batteries delivered* to permitted facilities *for treatment*.
- (da) the amount of collected waste portable batteries exported to third countries for treatment, preparation for reuse, preparation for repurposing or recycling.*
- (db) the amount of waste portable and LMT batteries collected and delivered to preparing for re-use or preparing for repurposing;*

Where waste management operators other than producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations acting on their behalf, collect waste portable *batteries or waste LMT* batteries from distributors or other collection points for waste portable batteries, they shall report to the competent authority for each calendar year the amount of waste portable batteries *or waste LMT* batteries *collected according to their chemistry*

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2. Producers of *SLI* batteries, industrial batteries and electric vehicle batteries or where appointed in accordance with Article *47a(1)* producer responsibility organisations acting on their behalf, shall report to the competent authority for each calendar year the following information, according to chemistries and *categories of waste* batteries:
- (a) the amount of *SLI* batteries, industrial batteries and electric vehicle batteries made available on the market for the first time in a Member State, excluding batteries that have left the territory of that Member State in that year, before being sold to end users;
  - (aa) the amount of waste industrial batteries or waste electric vehicle batteries collected and delivered to preparing for re-use or preparing for repurposing;*
  - (b) the amount of waste *SLI* batteries, *waste* industrial batteries *or waste* electric vehicle batteries collected and delivered ■ to permitted facilities *for treatment*.
  - (ba) the amount of collected waste SLI batteries, industrial batteries and electric vehicle batteries exported to third countries for treatment, preparation for reuse, preparation for repurposing or recycling.*

3. Where waste management operators collect waste batteries from distributors or other waste ***SLI batteries***, industrial ***batteries*** and electric vehicle batteries collection points or ***from*** end-users, they shall report to the competent authority for each calendar year the following information according to **■** chemistries and ***categories of waste*** batteries:

(a) the amount of waste ***SLI batteries, waste industrial batteries and waste*** electric vehicle batteries collected;

***(aa) the amount of waste industrial batteries or waste electric vehicle batteries collected and delivered to preparing for re-use or preparing for repurposing;***

(b) the amount of waste ***SLI batteries, waste industrial batteries and waste*** electric vehicle batteries delivered ***to permitted facilities*** for treatment ***operation and for*** recycling.

***(ba) the amount of collected waste SLI batteries, industrial batteries and electric vehicle batteries exported to third countries for treatment, preparation for reuse, preparation for repurposing or recycling***

**■**

**■**

4. The data referred to in points (a) and (b) of paragraph 1 shall include batteries incorporated into vehicles and appliances, and waste batteries removed from those in accordance with Article 52.

5. Waste management operators carrying out treatment and recyclers shall report to the competent authorities for each calendar year the following information:
- (a) the amount of waste batteries received for treatment, ***by Member State where waste was collected;***
  - (b) the amount of waste batteries entering ***preparation for reuse, preparation for repurposing or*** recycling processes, ***by Member State where waste was collected;***
  - (c) information on recycling efficiencies and levels of recovered materials for waste batteries ***and on destination and outcome of the final output fractions, by Member State where waste was collected.***

Reporting on the recycling efficiency and levels of recovered 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 is responsible for collecting the information and reporting this information to the competent authorities.

Recyclers shall report **■** the data ***on the recycling efficiency and levels of recovered materials to the competent authorities of the Member State where it is located.***

***The competent authority of the Member State, where treatment of waste batteries is carried out, shall provide the data referred to in paragraph 5 to the competent authority of Member State, where the batteries were collected, if different.***

*Waste batteries sent to another Member State for the purposes of treatment in that other Member State shall be counted towards the waste data and the attainment of the targets laid down in Annex XII by the Member State in which that waste was collected.*

6. Where waste holders other than those referred to in paragraph 5 export batteries for treatment ■ they shall report the data on the amount of separately collected waste batteries exported for treatment ■ and the data referred to in paragraph 45(b) and (c) to the competent authorities ■ of the *Member States where they are located.*
7. *Producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations acting on their behalf, waste management operators and waste holders referred to in this Article shall report within six months of the end of the reporting year for which the data are collected. The first reporting period shall concern the first full calendar year after the entry into force of the implementing act that establishes the format for reporting to the Commission, in accordance with Article 62(5).*
8. *The competent authorities shall establish electronic systems through which data shall be reported to them and specify the formats to be used.*
9. *Member State may allow competent authorities to request any additional information necessary to ensure the reliability of the data reported.*

## Article 62

### Reporting to the Commission

1. Member States shall make publicly available in an aggregated format for each calendar year the following data on portable batteries, *LMT batteries*, *SLI* batteries, industrial batteries and electric vehicle batteries, according to battery *categories* and their chemistries **■** :
  - (a) the amount of batteries made available on the market for the first time in a Member State, excluding batteries that have left the territory of that Member State in that year, *including those incorporated in vehicles or industrial products*, before being sold to *end-users*;
  - (b) the amount of waste batteries collected *and collection rates* in accordance with *Articles 48, 48a* and 49, calculated on the basis of the methodology set out in Annex XI;
  - (ba) the amount of waste industrial batteries or waste electric vehicle batteries collected and delivered to preparing for re-use or preparing for repurposing collected;*



- (c) the values of the achieved recycling efficiencies as referred to in Annex XII, Part B, and the values of the achieved material recovery referred to in Part C of Annex XII, *regarding the batteries collected in that Member State.*

Member States shall make this data available within 18 months *after* the end of the reporting year for which the data are collected. They shall make that information public electronically in the format established by the Commission in accordance with paragraph 5, using easily accessible data services **■**. The data shall be machine readable, sortable and searchable, respecting open standards for third party use. Member States shall notify the Commission when the data referred to in the first sub-paragraph is made available.

The first reporting period shall concern the first full calendar year after the *entry into force* of the implementing act that establishes the format for reporting *to the Commission*, in accordance with paragraph 5.

In addition to the obligations under Directives 2000/53/EC and 2012/19/EU, data referred to in points (a), **(b) and (c)** of paragraph 1 shall include batteries incorporated into vehicles and appliances, and waste batteries removed from those in accordance with Article 52.

2. Reporting on the recycling efficiency and levels of recovered materials referred to in paragraph 1 shall cover all individual steps of recycling and all corresponding output fractions.

3. The data made available by Member States in accordance with this Article shall be accompanied by a quality check report. That information shall be presented in the format established by the Commission in accordance with paragraph 6.
4. The Commission shall collect and review the information made available in accordance with this Article. The Commission shall publish a report assessing the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up ***within 6 months of*** the first reporting of the data by Member States and every four years thereafter.
5. The Commission shall, by ***24 months after entry into force of the Regulation***, adopt implementing acts laying down the format for the data and information to be reported to the Commission, as well as ***assessment*** methods and operational conditions, for the purpose of paragraphs 1 and 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).

## Chapter VIII

### *Digital battery passport*

#### Article 65

##### Battery passport

1. ***From 42 months after entry into force of the Regulation each LMT battery, each industrial battery with a capacity above 2 kWh and each electric vehicle battery placed on the market or put into service shall have an electronic record ("battery passport").***
2. ***The battery passport shall contain information relating to the battery model and information specific to the individual battery including as a result of the use of that battery, as set out in Annex XIII.***

*The information in the battery passport shall comprise:*

- (a) information accessible to the general public in accordance with point 1 of Annex XIII,*
- (b) information accessible only to notified bodies, market surveillance authorities and the Commission in accordance with points 2 and 3 of Annex XIII, and*
- (c) information accessible only to any natural or legal person with a legitimate interest in accessing and processing that information in accordance with points 2 and 4 of Annex XIII.*

*The information accessible to the persons referred to in point (c) shall:*

- (i) concern dismantling of the battery, including safety measures to be taken during that dismantling, and the detailed composition of the individual battery and be essential to allow repairers, remanufacturers, second-life operators and recyclers to conduct their respective economic activities in accordance with this Regulation;*

*or*

- (ii) in the case of individual batteries, be essential to the purchaser of the battery or parties acting on the purchaser's behalf, for the purpose of making the individual battery available to independent energy aggregators or energy market participants.*

*Such information shall be included to the extent applicable to the category or subcategory of battery concerned.*

*The Commission shall be empowered to adopt delegated acts in accordance with Article 73 to amend Annex XIII to change the information to be included in the battery passport in view of technical and scientific progress.*

3. *The battery passport shall be accessible through the QR code referred to in Article 13(5) and (6), linking to a unique identifier that the economic operator placing the battery on the market shall attribute to it.*

*The QR code and the unique identifier shall comply with standard ('ISO/IEC') 15459:2015 or equivalent.*

*The Commission is empowered to adopt delegated acts in accordance with Article 73 to amend the second subparagraph in light of technical and scientific progress by replacing the standard referred to or adding other European or international standards with which the QR code and the unique identifier shall comply.*

4. *The economic operator placing the battery on the market shall ensure that the information in the battery passport is accurate, complete and up to date. It may authorise an operator to act on their behalf.*

5. *All information included in the product passport shall be based on open standards, developed with an inter-operable format and shall be transferable through an open interoperable data exchange network without vendor lock-in and shall be machine-readable, structured, and searchable, in accordance with the essential requirements set out in Article 65a.*
6. *The access to information included in the battery passport shall be regulated in accordance with the essential requirements set out in Article 65a.*
- 6a. *For a battery that has been subject to preparation for re-use, preparation for repurposing, repurposing, or remanufacturing, the responsibility for the fulfilment of the obligations with respect to the battery passport under paragraph 4 first subparagraph shall be transferred to the economic operator that has placed that battery on the market or has put it into service. The battery shall have a new battery passport linked to the battery passport or passports of the original battery or batteries. When there is a change in the status of a battery to a waste battery, the responsibility for the fulfilment of the obligations with respect to the battery passport under paragraph 4 first subparagraph shall be transferred either to the producer or, where appointed in accordance with Article 47a(2), producer responsibility organisations acting on their behalf, or waste management operator referred to in Article 54a.*
- 6b. *A battery passport shall cease to exist after the battery has been recycled.*

7. ***By [36 months after entry into force of the Regulation], the Commission shall adopt implementing acts specifying the persons referred to in paragraph 2, point (c), to what information they shall have access, and to what extent they can download, share, publish and reuse that information.***

***The criteria for specifying the persons referred to in paragraph 2(c) and for determining the extent to which they can download, share, publish and reuse the information referred to in points 2 and 4 of Annex XIII shall be the following:***

- ***the necessity of having such information in order to evaluate the status and residual value of the battery and its capability for further use;***
- ***the necessity of having such information for the purpose of preparation for re-use, preparation for repurposing, repurposing, remanufacturing or recycling of the battery, or for choosing between those activities;***
- ***the need to ensure that the accessing and the processing of, commercially sensitive information is limited to the minimum necessary in accordance with applicable Union law.***

***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).***

## *Article 65a*

### *Technical design and operation of the battery passport*

*The technical design and operation of the battery passport shall comply with the following essential requirements:*

- (a) battery passports shall be fully interoperable with other digital product passports required by Union legislation concerning eco-design in relation to the technical, semantic and organisational aspects of end-to-end communication and data transfer;*
- (b) consumers, economic operators and other relevant actors shall have access to the battery passport free of charge and based on their respective access rights set out in Annex XIII and the implementing act adopted pursuant to Article 65(7)*
- (c) the data included in the battery passport shall be stored by the economic operator responsible for the fulfilment of the obligations with respect to the battery passport under Article 65, paragraphs 4 or 6a, or by operators authorised to act on their behalf;*



- (d) *if the data included in the battery passport is stored or otherwise processed by operators authorised to act on their behalf, those operators shall not be allowed to sell, re-use or process such data, in whole or in part, beyond what is necessary for the provision of the relevant storing or processing services;*
- (e) *the product passport shall remain available after the economic operator responsible for the fulfilment of the obligations with respect to the battery passport under Article 65, paragraphs 4 or 6a, ceases to exist or ceases its activity in the Union;*
- (f) *the rights to access and to introduce, modify or update information in product passport shall be restricted based on the access rights specified in Annex XIII and the implementing act adopted pursuant to Article 65(9).*

## Chapter IX

### Union market surveillance **■** and Union safeguard procedures

#### Article 66

##### Procedure at national level for dealing with batteries presenting a risk

1. *Without prejudice to Article 19 of the Regulation (EU) 2019/1020*, where the market surveillance authorities of one Member State have sufficient reason to believe that a battery covered by this Regulation presents a risk to human health or safety of persons, to property or to the environment, they shall carry out an evaluation in relation to the battery concerned covering all relevant requirements laid down in this Regulation.

Where, in the course of the evaluation referred to in the first subparagraph, the market surveillance authorities find that the battery does not comply with the requirements laid down in this Regulation, they shall without delay require the relevant economic operator to take all appropriate corrective action, *within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature of the risk*, to bring the battery into compliance with those requirements, to withdraw it from the market, or to recall it ■

The market surveillance authorities shall inform the relevant notified body accordingly.

2. ■ The market surveillance authorities ■ shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.
3. The economic operator shall ensure that all appropriate corrective action is taken in respect of all the concerned batteries that the economic operator has made available on the market throughout the Union.
4. Where the relevant economic operator does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the batteries being made available on their national market, to withdraw the battery from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5. The information referred to in the second subparagraph of paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant battery, the origin of that battery, the nature of the non-compliance alleged and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:
  - (a) failure of the battery to meet *any of the applicable* requirements set out in *Articles 6 to 10 or 12 to 14* of this Regulation;
  - (b) shortcomings in the harmonised standards referred to in Article 15;
  - (c) shortcomings in the common specifications referred to in Article 16.
6. Member States other than the Member State initiating the procedure under this Article shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the battery concerned, and, in the event of disagreement with the adopted national measure, of their objections.

7. Where, within three months of receipt of the information referred to in the second subparagraph of paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by *market surveillance authorities*, that measure shall be deemed justified.
8. Member States shall ensure that appropriate restrictive measures, such as withdrawal of the battery from the market, are taken in respect of the battery concerned without delay.

## Article 67

### Union safeguard procedure

1. Where, on completion of the procedure set out in Article 66(3) and (4), objections are raised against a measure taken by *market surveillance authorities*, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. ***The Commission shall endeavour to conclude that evaluation within one month.*** On the basis of the results of that evaluation, the Commission shall ***adopt an implementing act in the form of a decision determining*** whether the national measure is justified or not.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).

2. The Commission shall address its decision to all Member States and shall without delay communicate it to them and the relevant economic operator or operators.

If the national measure is considered justified, all Member States shall take the necessary measures to ensure that the non-compliant battery is withdrawn from their market, and shall inform the Commission accordingly.

If the national measure is considered unjustified, the Member State concerned shall withdraw that measure.

3. Where the national measure is considered justified and the non-compliance of the battery is attributed to shortcomings in the harmonised standards referred to in Article 15 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

- 3a. *Where the national measure is considered justified and the non-compliance of the battery is attributed to shortcomings in the common specifications referred to in Article 16, the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).*

## Article 68

### Compliant batteries which present a risk

1. Where, having carried out an evaluation under Article **66(1)**, a Member State finds that although a battery is in compliance with the **applicable** requirements set out in **Articles 6 to 10 and 12 to 14**, it presents a risk to the human health or safety of persons, to the protection of property or to the environment, it shall **without delay** require the relevant economic operator to take all appropriate measures, **within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature of the risk**, to ensure that the battery concerned, when **made available** on the market, no longer presents that risk, to withdraw the battery from the market or to recall it **■** .
2. The economic operator shall ensure that corrective action is taken in respect of all the concerned batteries that the economic operator has made available on the market throughout the Union.
3. The Member State shall immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the batteries concerned, the origin and the supply chain of the battery, the nature of the risk involved and the nature and duration of the national measures taken.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall adopt an implementing act in the form of a decision determining whether the national measure is justified or not and, where necessary, *proposing* appropriate measures.
5. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).
6. On duly justified imperative grounds of urgency relating to the protection of human health and safety of persons, and to the protection of property or to the environment, the Commission shall adopt an immediately applicable implementing act in accordance with the procedure referred to in Article 74(4).
7. The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

## *Article 68b*

### *Joint activities*

1. *Market surveillance authorities may carry out joint activities with organisations representing economic operators or end users, which may include the setting up by Member States or market surveillance authorities of battery competence centres, with a view to promoting compliance, identifying non-compliance, raising awareness and providing guidance in relation to the requirements of this Regulation in accordance with Article 9 of Regulation EU 2019/1020.*

## Article 69

### *Formal non-compliance*

1. Without prejudice to Article 66, where a Member State ***makes one of the following findings, it*** shall require the relevant economic operator to put an end to the non-compliance concerned **■** :
  - (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 20 of this Regulation;
  - (b) the CE marking has not been affixed;



(c) the identification number of the notified body, *where required under Annex VIII*, has been affixed in violation of Article 20 or has not been affixed;

(d) the EU declaration of conformity has not been drawn up or has not been drawn up correctly;

■

(f) the technical documentation is *either* not available, *or* not complete ■ ;

(g) the information referred to in ■ Article 38(8) or Article 41(3) ■ is absent, false or incomplete ■ ;

(h) any other administrative requirement provided for in Article 38 or Article 41 is not fulfilled;

■

■

■

2. Where the *non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the battery being made available on the market or ensure that it is recalled or withdrawn from the market.*

■

## *Article 69a*

### *Non-compliance with due diligence obligations*

- 1. Where a Member State finds that an economic operator has infringed an obligation on due diligence set out in Articles 45a to 45c of this Regulation, it shall require the relevant economic operator to put an end to the non-compliance concerned.*
- 2. Where the non-compliance referred to in paragraph 1 persists and where there is no other effective means available to put an end to the non-compliance, the Member State concerned shall take all appropriate measures to restrict or prohibit the batteries made available on the market by the economic operator referred to in paragraph 1 from being made available on the market and, if the non-compliance is serious, ensure that they are recalled or withdrawn from the market.*

## Chapter X

### Green public procurement, procedure for amending restrictions on ■ substances ■

#### Article 70

##### Green public procurement

1. Contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU shall, when procuring batteries or products containing batteries in situations covered by those Directives, take account of the environmental impacts of batteries over their life cycle with a view to ensure that such impacts of the batteries procured are kept to a minimum.
2. ***From 12 months after entry into force of delegated acts referred to in paragraph 3***, the obligation set out in paragraph 1 shall apply to any ***procedure for procurement*** by contracting authorities or contracting entities for the purchase of batteries, or products containing batteries, and shall mean that these contracting authorities and contracting entities are obliged to include technical specifications and award criteria based on Articles 7 to 10 to ensure that ***batteries or products are*** chosen ■ with significantly lower environmental impacts over their lifecycle.

3. The Commission shall, **12 months after the adoption of the latest of the delegated acts referred to in Article 7(2) subparagraph 4(a), Article 8(1), Article 9(2) and Article 10(3)**, adopt delegated acts in accordance with Article 73 supplementing this Regulation by establishing **criteria for the award of procurement procedures for batteries** based on the **sustainability requirements** set out in Articles 7 to 10.

## Article 71

### **Initiation of restriction procedure** substances

1. If the Commission considers that the use of a substance in the manufacture of batteries, or the presence of a substance in the batteries when they are placed on the market, or during their subsequent life cycle stages, including **during repurposing or during the treatment of waste batteries**, poses a risk to human health or the environment that is not adequately controlled and needs to be addressed on a Union-wide basis, it shall request the █ Agency █ to prepare a **restriction** dossier, **in the format outlined in** Annex XV to Regulation (EC) No 1907/2006. **The** dossier shall include a socio-economic assessment, including an analysis of alternatives.  
  
█
2. Within 12 months of the receipt of the request from the Commission in paragraph 1 and if the █ dossier prepared by the Agency pursuant to that paragraph demonstrates that action is necessary on a Union-wide basis, **beyond any measures already in place**, the Agency shall suggest restrictions in order to initiate the █ process described in **paragraph 3 to 8 of this Article, Article 71a and Article 71b**.

**3a. *If a Member State considers that the use of a substance in the manufacture of batteries, or the presence of a substance in the batteries when they are placed on the market, or during their subsequent life cycle stages, including during repurposing or during the treatment of waste batteries, poses a risk to human health or the environment that is not adequately controlled and needs to be addressed on a Union-wide basis, it shall notify the Agency that it proposes to prepare a restriction dossier. The Member State shall prepare a restriction dossier. The restriction dossier shall include a socio-economic assessment, including an analysis of alternatives.***

*If the restriction dossier demonstrates that action on a Union-wide basis is necessary, beyond any measures already in place, the Member State shall submit it to the Agency in the format outlined in Annex XV to Regulation (EC) No 1907/2006, in order to initiate the process.*

**3b. *When preparing a dossier for a restriction proposal which conforms to the requirements of Annex XV to Regulation (EC) No 1907/2006, the Agency referred to in Article 75 of Regulation (EC) No 1907/2006 or Member States shall take into account any available information and refer to any relevant risk assessment submitted for the purposes of other Union legislation covering the life cycle of the substance used in the battery, including the waste phase. To this end other bodies established under Union law and carrying out a similar task shall provide information to the Agency or Member State concerned on request. The Commission shall give access to the Agency, as appropriate, to the information defined in part A of Annex XIII, reported to the European Electronic Exchange System. Access to information held by the Agency in performing the tasks defined in Articles 6 and 71 will be subject to the provision in Article 118 of Regulation (EC) No 1907/2006.***

4. *The Agency or Member States shall refer to any dossier, chemical safety report or risk assessment submitted to the Agency or Member State under the Regulation (EC) No 1907/2006. The Agency or Member States shall also refer to any relevant risk assessment submitted for the purposes of other Union Regulations or Directives. To this end other bodies, such as agencies, established under Union law and carrying out a similar task shall provide information to the Agency or Member State concerned on request.*
5. *The Agency shall maintain a list of substances for which a restriction dossier under this Regulation is planned or underway by either the Agency or a Member State.*
6. *The Committee for Risk Assessment, set up pursuant to Article 76(1)(c) of Regulation (EC) No 1907/2006, and the Committee for Socio-economic Analysis, set up pursuant to Article 76(1)(d) of Regulation (EC) No 1907/2006, shall check whether the dossier submitted conforms to the requirements of Annex XV to Regulation (EC) No 1907/2006. Within 30 days of receipt, the respective Committee shall inform the Agency or the Member State suggesting restrictions, as to whether the dossier conforms. If the dossier does not conform, the reasons shall be given to the Agency or the Member State in writing within 45 days of receipt. The Agency or the Member State shall bring the dossier into conformity within 60 days of the date of receipt of the reasons from the Committees, otherwise the procedure under this provision shall be terminated.*

7. The Agency shall publish without delay the intention of the Commission *or a Member State* to initiate *the* restriction process ■ for a substance, *under this Article*, and shall inform stakeholders concerned.
8. The Agency shall make publicly available on its website the ■ dossier, including the restrictions suggested pursuant to paragraph *2 and 3 of this Article* without delay, clearly indicating the date of publication. The Agency shall invite all interested parties to submit individually or jointly, within four months of the date of publication:
- (a) *comments on dossiers and the suggested restrictions;*
  - (b) *a socio-economic analysis including an analysis of alternatives., or information which can contribute to one, of the suggested restrictions, examining the advantages and drawbacks of the proposed restrictions. It shall conform to the requirements in Annex XVI of Regulation (EC) No 1907/2006.*
9. *This delegated act shall be adopted within nine months following the receipt of the opinion of the Committee for Socio-economic Analysis of the European Chemical Agency (the "Agency") referred to in Article 71a. If the Committee for Socio-economic Analysis does not adopt an opinion by the deadline set in paragraph 2 or 5, as applicable, of Article 71a, the Commission shall take into account the socio-economic impact of the restriction, including the availability of alternatives for the substance and shall adopt a delegated act by the deadline set in paragraph 2 of Article 71a.*
10. *Where the draft amendment of Annex I diverges from the original proposal of the restriction dossier, prepared pursuant to the procedure laid down in Article 71, 71a and 71b, or if it does not take the opinions from the Agency into account, the Commission shall annex a detailed explanation of the reasons for the differences.*

## Article 71a

### Opinion of the Agency's Committees

1. Within 12 months of the date of publication referred to in *Article 71(8)*, the Committee for Risk Assessment ■ shall adopt an opinion as to whether the suggested restrictions are appropriate in reducing the risk to human health *or* the environment, based on its consideration of the relevant parts of the ■ dossier. This opinion shall take account of the ■ dossier prepared by the Agency at the request of the Commission *or by the Member State*, and the views of interested parties referred to in *Article 71(8)(a)*.
2. Within 15 months of the date of publication referred to in *Article 71(8)*, the Committee for Socio-economic Analysis ■ shall adopt an opinion on the suggested restrictions, based on its consideration of the relevant parts of the dossier and the socio-economic impact. Prior to that, it shall prepare a draft opinion on the suggested restrictions and on the related socio-economic impact, taking account of the analyses or information according to *Article 71(8)(b)*, if there are any.
3. The Agency shall publish the draft opinion of the Committee for Socio-economic Analysis on its website without delay and invite interested parties to provide their comments on the draft opinion no later than 60 days from the publication of that draft opinion.



4. The Committee for Socio-economic Analysis shall without delay adopt its opinion, taking into account where appropriate further comments received by the deadline set in paragraph 3. This opinion shall take account of the comments of interested parties submitted under *Article 71(8)(b) and paragraph 3 of this Article*.
5. Where the opinion of the Committee for Risk Assessment diverges significantly from the restrictions suggested, the Agency shall postpone the deadline for the opinion of the Committee for Socio-economic Analysis by a maximum of 90 days.
6. *Where the Committees for Risk Assessment and Socio-economic Analysis provide an opinion pursuant to paragraphs 1 and 2, they shall make use of rapporteurs under Article 87 of Regulation (EC) No 1907/2006 and in line with the conditions provided therein.*

#### *Article 71b*

##### *Submission of an opinion to the Commission*

1. The Agency shall submit to the Commission without delay the opinions of the Committees for Risk Assessment and Socio-economic Analysis on the restrictions suggested pursuant to *Article 71*. Where the opinions of the Committees for Risk Assessment and Socio-economic Analysis diverge significantly from the restrictions suggested *the restrictions*, the Agency shall submit an explanatory note to the Commission providing a detailed explanation of the reasons for such differences. If one or both of the Committees do not adopt an opinion by the deadline set in *paragraphs 1 and 2 of Article 71a* the Agency shall inform the Commission accordingly, stating the reasons.

2. The Agency shall publish the opinions of the two Committees on its website without delay.
3. The Agency shall provide the Commission *or Member State* on request with all documents and evidence submitted to or considered by it.

## Chapter XI

### Delegated powers and committee procedure

#### Article 73

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 6(2), 7(1), (2) and (3), **8(1), 8(4)**, 9(2), 10(3), **10(3a), 11(4), 12(2), 13(6a), 14(2c), 45a(3a), 45f(3), 48(8), 48a(8)**, 56(4), **57(4), (5) and (5b)**, 58(3), **65(2) and (3), and 70(3)** shall be conferred on the Commission for a period of five years from [date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.
3. The delegation of power referred to in Articles 6(2), 7(1), (2) and (3), **8(1), 8(4)**, 9(2), 10(3), **10(3a), 11(4), 12(2), 13(6a), 14(2c), 45a(3a), 45f(3), 48(8), 48a(8)**, 56(4), **57(4), (5) and (5b)**, 58(3), **65(2) and (3), and 70(3)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 6(2), 7(1), (2) and (3), **8(1), 8(4)**, 9(2), 10(3), **10(3a), 11(4), 12(2), 13(6a), 14(2c), 45a(3a), 45f(3), 48(8), 48a(8)**, 56(4), 57(4), **(5) and (5b)**, 58(3), **65(2) and (3), and 70(3)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## Article 74

### Committee procedure

1. The Commission shall be assisted by a committee established by Article 39 of Directive 2008/98/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

## Chapter XII

### Amendments

#### Article 75

##### Amendments to Regulation (EU) **2019/1020**

Regulation (EU) 2019/1020 is amended as follows:

- (1) in Article 4(5), the text “(EU) 2016/425(35) and (EU) 2016/426(36)” is replaced by the following:

“(EU) 2016/425 (\*), (EU) 2016/426 (\*\*) and [(EU) [...] *[year of adoption of this Regulation]*]/...(\*\*\*)]

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\* Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (OJ L 81, 31.3.2016, p. 51).

\*\* Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC (OJ L 81, 31.3.2016, p. 99).

\*\*\* [Regulation of the European Parliament and of the Council on batteries and waste batteries, amending Regulation (EU) No 2019/1020 and repealing Directive 2006/66/EC (For the Publications Office to fill in the OJ publication details)];“

(2) in Annex I, **■** point **21** of the list of Union harmonisation legislation *is replaced by the following*:

- "71. Regulation of the European Parliament and of the Council on batteries and waste batteries, amending Regulation (EU) No 2019/1020 and repealing Directive 2006/66/EC (the Publications Office to fill in the OJ publication details);"

#### *Article 75a*

#### *Amendments to Directive 2008/98/EC*

*Directive 2008/98/EC is amended as follows:*

(1) *in Article 8a(7), the following subparagraph is added:*

*"For batteries, as defined in Article 2 point (1) of [insert reference and numbering of this Regulation (= the Batteries regulation)], Member States shall take measures to ensure that extended producer responsibility schemes that have been established before 4 July 2018, comply with this Article by ... 24 months after entry into force of this Regulation (= the Batteries regulation)."*

## Chapter XIII

### Final provisions

#### Article 76

##### Penalties

***By 24 months after entry into force of the Regulation*** Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.



## Article 77

### Review

1. By **30 June of the calendar year in which the date falls that is 96 months after entry into force of the Regulation**, the Commission shall draw up a report on the application of this Regulation and its impact on the environment, **human health** and the functioning of the internal market **and submit and present it to the European Parliament and to the Council**.
2. Taking account of technical progress and practical experience gained in Member States, the Commission shall in its report include an evaluation on the following aspects of this Regulation:
  - (-a) **the list of common formats falling under the definition of portable batteries of general use;**
  - (a) sustainability and safety requirements set out in Chapter II, **including the possible need to introduce an export ban of batteries which are non-compliant with the restrictions set out in Annex I;**
  - (b) labelling and information requirements set out in Chapter III;
  - (c) **battery** due diligence requirements set out in Articles **45a to 45f**;

- (d) measures regarding **■** management of *waste* batteries set out in Chapter VII, ***including the possibility to introduce two sub-categories of portable batteries: rechargeable and non-rechargeable, with separate collection targets, and to introduce a separate collection target for portable batteries of general use.***
- (da) ***measures regarding electronic exchange of information and battery passport set out in Chapter VIII.***
- (db) ***infringements and the effectiveness, proportionality and dissuasiveness of penalties as set out in Article 76;***
- (dc) ***analysis of the impact of the Regulation on the competitiveness of and on the investments in the batteries sector, and of the administrative burden.***

*If* appropriate, the report ***referred to in paragraph 1*** shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.

3. ***Taking into account the revision of Regulation (EC) No 1907/2006, the Commission shall in its report include a specific evaluation on the need for a legislative proposal to amend Articles 6, 71, 71a and 71b.***

4. *The Commission shall assess whether any amendment to Chapter VIa is necessary in the light of the adoption, if any, of Union legislative acts laying down rules on sustainable corporate governance and due diligence, including obligations for companies regarding human rights adverse impacts and environmental adverse impacts with respect to their own operations, the operations of their subsidiaries and branches, and their value chain operations.*

*The Commission shall publish a report containing the results of such assessment by 12 months after entry into force of any of the legislative acts referred to in the first subparagraph, or by [the date of the general review clause in the batteries regulation], whichever is the earliest. Where appropriate, the Commission shall accompany its report with a legislative proposal amending Chapter VIa.*

5. *By 31 December 2030, the Commission shall submit a report to the European Parliament and the Council assessing the feasibility and the technical consequences of extending the scope of the definition of LMT battery in Article 2(9), in particular by including batteries powering non-wheeled vehicles. The report shall be accompanied, where appropriate, by a legislative proposal.*

6. *By 1 January 2025, the Commission shall assess how best to introduce harmonised standards for a common charger for, respectively, rechargeable batteries designed for light means of transport, as well as for rechargeable batteries incorporated into specific categories of electrical and electronic equipment covered by Directive 2012/19/EU. Charging devices for categories and classes of radio equipment under Article 3(4) of Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment shall be excluded from the scope of this assessment.*

## Article 78

### Repeal and transitional rules

Directive 2006/66/EC is repealed with effect from ... *[24 months after the entry into force of this Regulation]*; however, its:

- (a) Article 10(3) ■ shall continue to apply until 31 December 2023, except as regards the transmission of data to the Commission which shall continue to apply until **30 June 2025**;
- (b) *Article 12(4) and Article 12(5) shall continue to apply until 31 December 2025, except as regards the transmission of data to the Commission which shall continue to apply until 30 June 2027;*
- (c) Article 21(2) shall continue to apply until **36 months after entry into force of this regulation**.

References to the repealed Directive shall be construed as references to this Regulation.

Article 79

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from *6 months after the entry into force of this Regulation*.

*Article 17 and Chapter VI shall apply from 12 months after entry into force of the Regulation, except for Article 17(3) which shall apply from 12 months after the date of the first publication referred to in Article 30(2).*

3. *Chapter VII shall apply from 24 months after entry into force of the Regulation.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

## Annex I

### Restrictions on hazardous substances

Designation of the substance or group of substances	Conditions of restriction
<p>1. Mercury CAS No. 7439-97-6 EC No. 231-106-7 and its compounds</p>	<p>1. Batteries, whether or not incorporated into appliances, <b>light means of transport or vehicles</b>, shall not contain more than <b>0,0005 %</b> of mercury (expressed as mercury metal) by weight <b>█</b> .</p> <p><b>█</b></p>
<p>2. Cadmium CAS No. 7440-43-9 EC No. 231-152-8 and its compounds</p>	<p>1. Portable batteries, whether or not incorporated into appliances, <b>light means of transport or vehicles</b>, shall not contain more than <b>0,002%</b> of cadmium (expressed as cadmium metal) by weight <b>█</b> .</p> <p><b>█</b></p> <p><b>█</b></p> <p><b>█</b></p>

<p><b>2a. Lead</b> <b>CAS No. 7439-92-1</b> <b>EC No. 231-100-4 and its compounds</b></p>	<p><b>1. From 12 months after entry into force of the Regulation, portable batteries, whether or not incorporated into appliances, shall not contain more than 0,01 % of lead (expressed as lead metal) by weight.</b></p> <p><b>2. The restriction set out in point 1 shall not apply to portable zinc-air button cells until 60 months after entry into force of the Regulation.</b></p>
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## Annex II

### Carbon footprint

#### 1. Definitions

For the purposes of this Annex, the following definitions shall apply:

- (a) ‘Activity data’ means the information associated with processes while modelling Life Cycle Inventories (LCI). The aggregated LCI results of the process chains that represent the activities of a process are each multiplied by the corresponding activity data and then combined to derive the *carbon* footprint associated with that process;
- (b) ‘Bill of materials’ means list of the raw materials, sub-assemblies, intermediate assemblies, sub-components, parts and the quantities of each needed to manufacture the product in scope of the study;
- (c) ‘Company-specific data’ refers to directly measured or collected data from one or multiple facilities (site-specific data) that are representative for the activities of the company. It is synonymous to “primary data”;
- (d) ‘Functional unit’ means the qualitative and quantitative aspects of the function(s) and/or service(s) provided by the product being evaluated;



- (e) ‘Life cycle’ means the consecutive and interlinked stages of a product system, from raw material acquisition or generation from natural resources to final disposal (ISO 14040:2006 *or equivalent*);
- (f) ‘Life cycle inventory (LCI)’ means the combined set of exchanges of elementary, waste and product flows in a LCI dataset;
- (g) ‘Life cycle inventory (LCI) dataset’ means a document or file with life cycle information of a specified product or other reference (e.g., site, process), covering descriptive metadata and quantitative life cycle inventory. A LCI dataset could be a unit process dataset, partially aggregated or an aggregated dataset;
- (h) ‘Reference flow’ means the measure of the outputs from processes in a given product system required to fulfil the function expressed by the functional unit (based on ISO 14040:2006 *or equivalent*);

- (i) ‘Secondary data’ means data not from a specific process within the supply-chain of the company performing a carbon footprint study. This refers to data that is not directly collected, measured, or estimated by the company, but sourced from a third party LCI database or other sources. Secondary data includes industry average data (e.g., from published production data, government statistics, and industry associations), literature studies, engineering studies and patents, and may also be based on financial data, and contain proxy data, and other generic data. Primary data that go through a horizontal aggregation step are considered as secondary data;
- (j) ‘System boundary’ means the aspects included or excluded from the life cycle study.

Additionally, the harmonised rules for the calculation of the carbon footprint of batteries shall include any further definition necessary for their interpretation.

## 2. Scope

This Annex provides essential elements on how to calculate the carbon footprint.

The harmonised calculation rules referred to in Article 7 shall build on the essential elements included in this Annex, be in compliance with the latest version of the Commission Product Environmental Footprint<sup>1</sup> (PEF) method and relevant Product Environmental Footprint Category Rules (PEFCRs)<sup>2</sup> and reflect the international agreements and technical/scientific progress in the area of life cycle assessment<sup>3</sup>.

The calculation of the life cycle carbon footprint shall be based on the bill of material, the energy, and auxiliary materials used in a specific plant to produce a specific battery model. In particular, the electronic components (e.g. battery management units, safety units) and the cathode materials have to be accurately identified, as they may become the main contributor for the battery carbon footprint.



### 3. Functional unit and reference flow

The functional unit is further defined as one kWh (kilowatt-hour) of the total energy provided over the service life by the battery system, measured in kWh. The total energy is obtained from the number of cycles multiplied by the amount of delivered energy over each cycle.

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0179&from=EN>

<sup>2</sup> [https://ec.europa.eu/environment/eussd/smgp/pdf/PEFCR\\_guidance\\_v6.3.pdf](https://ec.europa.eu/environment/eussd/smgp/pdf/PEFCR_guidance_v6.3.pdf)

<sup>3</sup> See [https://ec.europa.eu/environment/eussd/smgp/dev\\_methods.htm](https://ec.europa.eu/environment/eussd/smgp/dev_methods.htm)

The reference flow is the amount of product needed to fulfil the defined function and shall be measured in kg of battery per kWh of the total energy *delivered by the battery over its service life*. *All quantitative input and output data collected by the manufacturer to quantify the carbon footprint shall be calculated in relation to this reference flow.* *As an exception, for back-up batteries that have as primary function ensuring continuity of a power source, the functional unit is defined as the ability of providing one kWhmin (kilowatt-minute) of backup power capability at any moment over the lifetime of the battery, measured in kWhmin. The reference flow is the amount of product needed to fulfil the defined function and shall be measured in kg of battery per kWhmin of backup power capability divided by the service life of the battery in years.* All quantitative input and output data collected by the manufacturer to quantify the carbon footprint shall be calculated in relation to this reference flow. *In exceptional cases, such as for batteries for hybrid non plug-in vehicles, the methodology may specify a different functional unit.*

4. System boundary

The following life cycle stages and processes shall be included in the system boundary:

Life cycle stage	Short description of the processes included
Raw material acquisition and pre-processing	Includes mining and <b>other relevant sourcing, pre-processing and transport of active materials</b> , up to the manufacturing of battery cells and batteries components (active materials, separator, electrolyte, casings, active and passive battery components), and electric/electronics components.

Main product production	Assembly of battery cells and assembly of batteries with the battery cells and the electric/electronic components
Distribution	Transport to the point of sale
End of life and recycling	Collection, dismantling and recycling

The following processes shall be excluded:

- Manufacturing of equipment for batteries assembly and recycling, as impacts have been calculated as negligible in the PEFCRs for high specific energy rechargeable batteries for mobile applications;
- Battery assembly process with the original equipment manufacturer (OEM) system components. It mainly corresponds to mechanical assembly, and it is included inside the OEM equipment or vehicle assembly line. The specific energy or material consumption for this process are negligible when compared to the manufacturing process of OEM components.

The use phase should be excluded from the lifecycle carbon footprint calculations, as not being under the direct influence of manufacturers unless it is demonstrated that choices made by battery manufacturers at the design stage can make a non-negligible contribution to this impact.

## 5. Use of company specific and secondary datasets

Due to the high number of battery components and the complexity of the processes, the economic operator shall limit, where justified, the use of company specific data to process and component analysis to the battery-specific parts.

In particular, all activity data related to the battery's anode, cathode, electrolyte, separator and cell-casing shall refer to a specific battery model produced in a specific production plant (i.e., no default activity data shall be used). The battery-specific activity data shall be used in combination with the relevant Product Environmental Footprint compliant secondary datasets.

As the carbon footprint declaration shall be specific to a model battery produced in a defined production site, sampling of data collected from different plants producing the same battery model should not be allowed.

A change in the bill of materials or energy mix used to produce a battery model requires a new calculation of the carbon footprint for that battery model.

The harmonised rules to be elaborated via a delegated act *referred to in Article 7(1)* shall include detailed modelling of the following lifecycle stages:

- Raw material acquisition and pre-processing stage

- Production stage
- Distribution
- Own electricity production
- End of life stage

#### 6. Carbon footprint impact assessment

The carbon footprint of the battery shall be calculated using the “climate change” life cycle impact assessment method recommended in the 2019 Joint Research Centre (JRC) report available at [https://eplca.jrc.ec.europa.eu/permalink/PEF\\_method.pdf](https://eplca.jrc.ec.europa.eu/permalink/PEF_method.pdf).

The results shall be provided as characterised results (without normalisation and weighting). The list of characterization factors to be used is available at <https://eplca.jrc.ec.europa.eu/EnvironmentalFootprint.html>.

#### 7. Offsets

Offsets are calculated relative to a baseline that represents a hypothetical scenario for what emissions would have been in the absence of the mitigation project that generates the offsets.

Offsets shall not be included in the carbon footprint declaration, but may be reported separately as additional environmental information and used for communication purposes.

## 8. Carbon footprint performance classes

Depending on the distribution of the values of the batteries' carbon footprint declarations placed *on the* market, a meaningful number of classes of performance will be identified, with category A being the best class with the lowest carbon footprint life cycle impact, to allow for market differentiation *of battery categories laid down in Article 7(1)*.

The identification of the threshold for each class of performance, as well as their width, will be based on the distribution of performances of the *battery categories laid down in Article 7(1)* placed on the market in the previous 3 years, the expected technological improvements, and other technical factors to be identified.



## 9. Maximum carbon thresholds

Based on the information collected through the carbon footprint declarations and the relative distribution of the carbon footprint performance classes of battery models placed on the market, and taking into account the scientific and technical progress in the field, the Commission will identify maximum lifecycle carbon footprint thresholds for *battery categories laid down in Article 7(1)*, further to a dedicated impact assessment to determine those values.



In proposing maximum carbon footprint thresholds *referred to in the first subparagraph*, the Commission will take into account the relative distribution of the carbon footprint values in batteries on the market, the extent of progress in the reduction of carbon footprint of batteries placed on the Union market and the effective and potential contribution of this measure to the Union's objectives on sustainable mobility and climate neutrality by 2050.

## Annex III

### Electrochemical performance and durability parameters for portable batteries of general use

#### *Part A non-rechargeable batteries*

- 1. **Minimum average duration**, minimum average time *met by a sample of batteries* on discharge when used in specific applications.
- 2. **Minimum average duration**, minimum average time *met by a sample of batteries* on discharge when used in specific applications.
- 3. **Delayed discharge performance**, the relative decrease of the minimum average duration, *with the initially measured capacity as the reference point*, after a defined period of time and specific conditions (*temperature, and relative humidity*).
- 3a. *Resistance to leakage, resistance to unplanned escape of electrolyte, gas or other material.*

#### *Part B rechargeable batteries*

- 1. *Rated capacity, capacity value of a battery determined under specified conditions and declared by the manufacturer.*

2. *Charge (capacity)<sup>1</sup> retention, capacity that a battery can deliver after storage, at a specific temperature, for a specific time without subsequent recharge as a percentage of the rated capacity.*
3. *Charge (capacity) recovery, capacity that a battery can deliver with subsequent recharge after storage, at a specific temperature, for a specific time, as percentage of rated capacity.*
4. Endurance in cycles, *the number of charge and discharge cycles a battery can perform under specific conditions before the capacity drops below a specified fraction of the rated capacity.*
5. Resistance to leakage, ■ resistance to unplanned escape of electrolyte, gas or other material ■ .

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<sup>1</sup> *IEC mentions charge and capacity. Both represent the same physical quantity (charge); the difference is only that charge is expressed in  $C = A*s$  whereas capacity is expressed in  $A*h$ . In practice mostly capacity is used.*

## Annex IV

Electrochemical performance and durability requirements for LMT batteries, industrial batteries with a capacity above 2 kWh and electric vehicle batteries

### Part A

Parameters related to the electrochemical performance and durability

1. Rated capacity (in Ah) and capacity fade (in %).
2. Power (in W) and power fade (in %).
3. Internal resistance (in  $\square$ ) and internal resistance increase (in %).
4. *Where applicable*, energy round trip efficiency and its fade (in %).
5. **█** Their expected life-time under the *reference* conditions for which they have been designed *in terms of cycles, except for non-cycle applications, and calendar years*.

**█** 'Rated capacity' means the total number of ampere-hours (Ah) that can be withdrawn from a fully charged battery under specific *reference* conditions.

‘Capacity fade’ means the decrease over time and upon usage in the amount of charge that a battery can deliver at the rated voltage, with respect to the original rated capacity **■** .

‘Power’ means the amount of energy that a battery is capable to provide over a given period of time *under reference conditions*.

‘Power fade’ means the decrease over time and upon usage in the amount of power that a battery can deliver at the rated voltage.

‘Internal resistance’ means the opposition to the flow of current within a cell or a battery *under reference conditions*, that is, the sum of electronic resistance and ionic resistance to the contribution to total effective resistance including inductive/capacitive properties.

‘Energy round trip efficiency’ means the ratio of the net energy delivered by a battery during a discharge test to the total energy required to restore the initial State of Charge by a standard charge.

## Part B

Elements for explanation of the measurements made for parameters listed in Part A

1. Applied discharge rate and charge rate.
2. Ratio between *nominal* battery power (W) and battery energy (Wh).
3. Depth of discharge in the cycle-life test.
4. Power capability at 80% and 20% state of charge.
5. Any calculations performed with the measured parameters, if applicable.

## Annex V

### Safety parameters

#### 1. Thermal shock and cycling

This test shall be designed to evaluate changes in the integrity of the battery arising from expansion and contraction of cell components upon exposure to extreme and sudden changes in temperature and potential consequences of such changes. During a thermal shock the battery shall be exposed to two temperature limits and held at each temperature limit for a specified period of time.

#### 2. External short circuit protection

This test shall evaluate the safety performance of a battery when applying an external short circuit. The test can evaluate the activation of the overcurrent protection device or the ability of cells to withstand the current without reaching a hazardous situation (e.g. thermal runaway, explosion, fire). The main risk factors are heat generation at cell level and electrical arcing which may damage circuitry or may lead to reduced isolation resistance.

### 3. Overcharge protection

This test shall evaluate the safety performance of a battery in overcharge situations. The main safety risks during overcharge are the decomposition of the electrolyte, cathode and anode breakdown, exothermic decomposition of the solid electrolyte interphase (SEI) layer, separator degradation, and the *Lithium* plating, which can lead to self-heating of the battery and thermal runaway. The factors affecting the outcome of the test shall include, at least, the charging rate and the finally reached state-of-charge (SOC). The protection can be ensured by either voltage control (interruption after reaching the limit charging voltage) or current control (interruption after exceeding maximum charging current).

### 4. Over-discharge protection

This test shall evaluate the safety performance of a battery in over-discharge situations. Safety risks during over-discharge include polarity reversal leading to oxidation of the anode current collector (Copper) and to plating on the cathode side. Even minor over-discharge may cause dendrite formation and finally short circuit.

### 5. Over-temperature protection

This test shall evaluate the effect of temperature control failure or failure of other protection features against internal overheating during operation.

6. Thermal propagation *protection*

This test shall evaluate the safety performance of a battery in thermal propagation situations. A thermal runaway in one cell can cause a cascading reaction through the entire battery which can be composed of numerous cells. It can lead to severe consequences including a significant gas release. The test shall take into account the tests under development for transport applications by ISO and UN GTR.

7. Mechanical damage by external forces ■

These tests shall simulate one or more situations in which a battery *is accidentally exposed to mechanical stresses* and remains operational for the purpose for which it was designed. The criteria to simulate these situations should reflect real life uses.



## 8. Internal short circuit

This test shall evaluate the safety performance of a battery in internal short-circuit situations. The occurrence of internal short circuits, one of the main concerns for battery manufacturers, potentially leads to venting, thermal runaway, along with sparking which can ignite the electrolyte vapours escaping from the cell. The generation of these internal shorts can be triggered by manufacturing imperfections, presence of impurities in the cells or dendritic growth of lithium, and leads to most of in-field safety incidents. Multiple internal short circuits scenarios are possible (e.g. electrical contact of cathode/anode, aluminium current collector/copper current collector, aluminium current collector /anode) each with a different contact resistance.

## 9. Thermal abuse

During this test, the battery shall be exposed to elevated temperatures (in IEC 62619 this is 85 °C) which can trigger exothermal decomposition reactions and lead to a thermal runaway of the cell.

■

**9a. Fire test**

*The risk of explosion shall be assessed by exposing the battery to fire.*

**10. Emission of gases**

*Batteries can contain significant amounts of potentially hazardous materials, for example highly flammable electrolytes, corrosive and toxic components. If exposed to certain conditions, the integrity of the battery could be compromised, with release of hazardous gases. Therefore, it is important to identify emission of substances released from the battery during tests: proper considerations to the risk of toxic gases emitted from non-aqueous electrolytes shall be made for all safety parameters listed in points 1 to 10.*

## Annex VI

### Labelling, marking and information requirements

#### Part A: General information about batteries

Information on the label of batteries:

1. the manufacturer's *identification in accordance with Article 38(8)*;
2. the battery *category and its identification in accordance with Article 38(7a)*;
- 
- 
- 
3. *manufacturing place (geographical location of a battery manufacturing facility)*;
4. *manufacturing date (month and year)*;
5. *weight*;
- 5a. *capacity*;

6. chemistry;
7. hazardous substances contained in the battery other than mercury, cadmium or lead;
8. **■**
9. *usable extinguishing agent.*
10. *Critical raw materials contained in the battery above a concentration of 0,1 % weight by weight.*

Part B: Symbol for separate collection of batteries



Part C: QR code

The QR code shall be *of a high colour contrast* and of a size that is easily readable by a commonly available QR reader, such as those integrated in hand-held communication devices.

## Annex VII

### Parameters for determining the state of health of batteries and expected lifetime of batteries

#### *Part A*

Parameters for determining the state of health of batteries:

##### *Electric vehicle batteries*

##### *1. State of certified energy (SOCE)*

##### *Stationary battery energy storage systems and LMT batteries*

1. Remaining capacity;

■

3. *Where possible*, remaining power capability ■ ;

4. *Where possible*, remaining round trip efficiency;

■

6. Evolution of self-discharging rates;
7. *Where possible*, ohmic resistance **■** .

### ***Part B***

Parameters for determining the expected lifetime of *stationary battery energy storage systems and LMT* batteries:

1. The *date* of manufacturing of the battery and, *where appropriate, the date of* putting into service;
2. Energy throughput;
3. Capacity throughput;
4. *Tracking of harmful events, such as the number of deep discharge events, time spent in extreme temperatures, time spent charging during extreme temperatures;*
5. *Number of full charge-discharge cycles.*

## Annex VIII

### Conformity assessment procedures

#### Part A

##### MODULE A – INTERNAL PRODUCTION CONTROL

1. Description of the module

Internal production control is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4 *of this Module*, and ensures and declares *on his sole responsibility* that the *batteries concerned satisfy* the requirements set out in Articles 6, 9, 10 ■ , 12, 13 and 14 that apply to them.

2. Technical documentation

The manufacturer shall draw up the technical documentation. The documentation shall make it possible to assess the battery's conformity with the relevant requirements referred to in point 1, *and shall include an adequate analysis and assessment of the risk(s)*.

The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and *operation* of the battery. The technical documentation shall contain, where applicable, at least the following elements:

- (a) a general description of the battery and its intended use;
- (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits;
- (c) descriptions and explanations necessary for the understanding of the drawings and schemes referred to in point (b) and the operation of the battery;
- (ca) a specimen of the labelling required in accordance with Article 13;**
- (d) a list which includes:
  - (i) **a list of** the harmonised standards referred to in Article 15, applied in full or in part, **including an indication of which parts have been applied;**
  - (ii) **a list of** the common specifications referred to in Article 16, applied in full or in part, **including an indication of which parts have been applied;**
  - (iii) **a list of** other relevant technical specifications used for measurement or calculation purposes;

■



- (v) where the harmonised standards referred to in point (i) and the common specifications referred to in point (ii) have not been applied *or are not available*, a description of the solutions adopted to meet the *applicable* requirements referred to in point 1 *or to verify the compliance of batteries with those requirements*;

*(da) results of design calculations made, examinations carried out, technical or documentary evidence used; and*

- (e) test reports.

### 3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure compliance of the *batteries* with the technical documentation referred to in point 2 and with the *applicable* requirements referred to in point 1.

### 4. CE marking and EU declaration of conformity

The manufacturer shall affix the CE marking to each individual **■** battery **■** that satisfies the *applicable* requirements referred to in point 1, or, where *that is not possible or not warranted due to the nature of the battery, to the packaging and the documents* accompanying the battery **■** .

The manufacturer shall draw up an EU declaration of conformity for each battery model in accordance with Article 18 and keep it together with the technical documentation at the disposal of the national authorities for ten years after the last battery belonging to the respective battery model has been placed on the market. ***The EU declaration of conformity shall identify the battery model for which it has been drawn up.***

A copy of the EU declaration of conformity shall be made available to the ***national*** authorities ■ upon request.

5. ***Manufacturer's*** Authorised representative

The manufacturer's obligations set out in point 4 may be fulfilled by ***the manufacturer's*** authorised representative, on ***its*** behalf and under ***the manufacturer's*** responsibility, provided that they are specified in the mandate.

## Part B

### MODULE *D1* - *QUALITY ASSURANCE OF THE PRODUCTION PROCESS*

#### 1. Description of the module

*Quality assurance of the production process* is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 4 and 7 of this module, and ensures and declares *on his sole responsibility, without prejudice to the responsibilities of other economic operators in accordance with this Regulation*, that the *batteries concerned* satisfy the *applicable* requirements set out in Articles 7 and 8, or, at the choice of the manufacturer, all applicable requirement set out in Articles 6 to 10 and 12 to 14.

#### 2. Technical documentation

The manufacturer *shall establish* the technical documentation. The *technical* documentation shall make it possible to assess the battery's conformity with the *relevant requirements*, and shall include an adequate analysis and assessment of the risk(s).

The technical documentation shall specify the applicable requirements ■ and cover, as far as relevant for the assessment, the design, manufacture and operation of the battery. The technical documentation shall, *where applicable, contain* at least the following elements:

- (a) a general description of the battery *and its intended use*,

- (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, *etc.*,
- (c) descriptions and explanations necessary for the understanding of the drawings and schemes referred to in point (b) and the operation of the battery,
- (d) *a specimen of the labelling required in accordance with Article 13,*
- (e) *a list of the harmonised standards referred to in Article 15 and/or the common specifications referred to in Article 16, applied, and, in the event of partly applied harmonised standards and/or common specifications, an indication of which parts have been applied,*
- (f) *a list of other relevant technical specifications used for measurement or calculation purposes and descriptions of the solutions adopted to meet the applicable requirements referred to in point 1 or to verify the compliance of batteries with those requirements, where harmonised standards and/or common specifications have not been applied or are not available,*
- (g) *results of design calculations made, examinations carried out, technical or documentary evidence used, etc.,*

- (h) a study supporting the carbon footprint values referred to in Article 7(1) and the carbon footprint class referred to in Article 7(2), containing the calculations made in accordance with the methodology set out in the delegated act adopted by the Commission pursuant to point (a) of Article 7(1) and the evidence and information determining the input data for those calculations,*
- (i) a study supporting the recycled content share referred to in Article 8, containing the calculations made in accordance with the methodology set out in the delegated act adopted by the Commission pursuant to second subparagraph of Article 8(1) and the evidence and information determining the input data for those calculations;*
- (j) test reports.*

**3. Availability of technical documentation**

*The manufacturer shall keep the technical documentation at the disposal of the national authorities for 10 years after the battery has been placed on the market.*

#### 4. Manufacturing

The manufacturer **■** shall *operate an approved quality system for production, final product inspection and testing* of the *batteries concerned as specified* in point 5, and *shall be subject to surveillance as specified* in point 6.

#### 5. *Quality system*

1. *The manufacturer shall lodge an application for assessment of his quality system with the notified body of his choice, for the batteries concerned.*

*The application shall include:*

- (a) *the name and address of the manufacturer and, if the application is lodged by the manufacturer's authorised representative, his name and address as well,*
- (b) *a written declaration that the same application has not been lodged with any other notified body,*
- (c) *all relevant information for the battery category envisaged,*
- (d) *the documentation concerning the quality system referred to in point 5.2,*
- (e) *the technical documentation referred to in point 2.*

2. *The quality system shall ensure compliance of the batteries with the requirements referred to in point 1 that apply to them.*

*All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.*

*It shall, in particular, contain an adequate description of:*

- (a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality,*
- (b) the procedures for documenting and monitoring the parameters and data necessary for calculating and updating the recycled content share referred to in Article 8 and, where applicable, the carbon footprint values and class referred to in Article 7,*
- (c) the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,*
- (d) the examinations, calculations, measurements and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,*

- (e) the quality records, such as inspection reports and calculation, measurement and test data, calibration data, qualification reports on the personnel concerned, etc.,*
  - (f) the means of monitoring the achievement of the required product quality and the effective operation of the quality system.*
- 3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 5.2.**

*It shall presume conformity with those requirements in respect of the elements of the quality system that comply with the corresponding specifications of the relevant harmonised standard.*

*In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant product field and product technology concerned, and knowledge of the applicable requirements referred to in point 1. The audit shall include an assessment visit to the manufacturer's premises.*



*The auditing team shall review the technical documentation referred to in point 2 in order to verify the manufacturer's ability to identify the applicable requirements referred to in point 1 and to carry out the necessary examinations, calculations, measurements and tests with a view to ensuring compliance of the battery with those requirements. The auditing team shall check the reliability of data used for the calculation of the recycled content share referred to in Article 8 and, where applicable, the carbon footprint values and class referred to in Article 7 as well as the proper implementation of the relevant calculation methodology.*

*The decision of the notified body shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.*

- 4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.*
- 5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.*

*The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 5.2 or whether reassessment is necessary.*

*The notified body shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.*

**6. Surveillance under the responsibility of the notified body**

- 1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.*
- 2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites and shall provide it with all necessary information, in particular:*
  - (a) the quality system documentation referred to in point 5.2,*
  - (b) the technical documentation referred to in point 2,*
  - (c) the quality records, such as inspection reports and calculation, measurement and test data, calibration data, qualification reports on the personnel concerned, etc.*

3. *The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide the manufacturer with an audit report. During such audits the notified body shall check at least the reliability of data used for the calculation of the recycled content share referred to in Article 8 and, where applicable, the carbon footprint values and class referred to in Article 7 as well as the proper implementation of the relevant calculation methodology.*
  4. *In addition, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out examinations, calculations, measurements and tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.*
7. CE marking and EU declaration of conformity
1. The manufacturer shall affix the CE marking, and, under the responsibility of the notified body referred to in point 5.1, the latter's identification number to each **individual** battery ■ that satisfies the applicable requirements *referred to in point 1, or, where that is not possible or not warranted due to the nature of the battery, to the packaging and the documents accompanying the battery.*

2. The manufacturer shall draw up an EU declaration of conformity for each battery model in accordance with Article 18 and keep it **■** at the disposal of the national authorities for **10** years after the last battery belonging to the respective battery model has been placed on the market. ***The EU declaration of conformity shall identify the battery model for which it has been drawn up.***

A copy of the EU declaration of conformity shall be made available to the ***national authorities*** upon request.

#### **8. *Availability of quality system documentation***

***The manufacturer shall, for a period of 10 years after the battery has been placed on the market, keep at the disposal of the national authorities:***

- (a) the quality system documentation referred to in point 5.2,***
- (b) the change referred to in point 5.5, as approved,***
- (c) the decisions and reports of the notified body referred to in points 5.5, 6.3 and 6.4.***

#### **9. *Information obligations of the notified body***

***Each notified body shall inform its notifying authority of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authority the list of quality system approvals refused, suspended or otherwise restricted.***

*Each notified body shall inform the other notified bodies of quality system approvals which it has refused, withdrawn, suspended or otherwise restricted, and, upon request, of quality system approvals which it has issued.*

**10. Manufacturer's Authorised representative**

The manufacturer's obligations set out in points 3, 5.1, 5.5, 7 and 8 may be fulfilled by the manufacturer's authorised representative, on the manufacturer's behalf and under the manufacturer's responsibility, provided that they are specified in the mandate.

**Part C**

**MODULE G - CONFORMITY BASED ON UNIT VERIFICATION**

**1. Description of the module**

*Conformity based on unit verification is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 5 of this module, and ensures and declares on his sole responsibility, without prejudice to the responsibilities of other economic operators in accordance with this Regulation, that the battery concerned, which has been subject to the provisions of point 4, is in conformity with the applicable requirements set out in Articles 7 and 8, or, at the choice of the manufacturer, all applicable requirements set out in Articles 6 to 10 and 12 to 14.*

## **2. Technical documentation**

**2.1 The manufacturer shall establish the technical documentation and make it available to the notified body referred to in point 4. The technical documentation shall make it possible to assess the battery's conformity with the relevant requirements and shall include an adequate analysis and assessment of the risk(s).**

**The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the battery.**

**The technical documentation shall, where applicable, contain at least the following elements:**

- (a) a general description of the battery and its intended use,**
- (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,**
- (c) descriptions and explanations necessary for the understanding of the drawings and schemes referred to in point (b) and the operation of the battery,**
- (d) a specimen of the labelling required in accordance with Article 13,**

- (e) a list of the harmonised standards referred to in Article 15 and/or the common specifications referred to in Article 16 applied, and, in the event of partly applied harmonised standards and/or common specifications, an indication of which parts have been applied,*
- (f) a list of other relevant technical specifications used for measurement or calculation purposes and descriptions of the solutions adopted to meet the applicable requirements referred to in point 1 or to verify the compliance of batteries with those requirements, where harmonised standards and/or common specifications have not been applied or are not available,*
- (g) results of design calculations made, examinations carried out, technical or documentary evidence used, etc.,*
- (h) a study supporting the carbon footprint values and class referred to in Article 7, containing the calculations made in accordance with the methodology set out in the delegated act adopted by the Commission pursuant to point (a) of the third subparagraph of Article 7(1) and the evidence and information determining the input data for those calculations,*

- (i) *a study supporting the recycled content share referred to in Article 8, containing the calculations made in accordance with the methodology set out in the delegated act adopted by the Commission pursuant to second subparagraph of Article 8(1) and the evidence and information determining the input data for those calculations,*
- (j) *test reports.*

*2.2 The manufacturer shall keep the technical documentation at the disposal of the national authorities for 10 years after the battery has been placed on the market.*

### **3. Manufacturing**

*The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured battery with the applicable requirements referred to in point 1.*



#### **4. Verification**

**4.1 A notified body chosen by the manufacturer shall carry out appropriate examinations, calculations, measurements and tests, set out in the relevant harmonised standards referred to in Article 15 and/or common specifications referred to in Article 16, or equivalent tests, to check the conformity of the battery with the applicable requirements referred to in point 1, or have them carried out. In the absence of such a harmonised standard and/or common specification the notified body concerned shall decide on the appropriate examinations, calculations, measurements and tests to be carried out.**

**The notified body shall issue a certificate of conformity in respect of the examinations, calculations, measurements and tests carried out and shall affix its identification number to the approved battery, or have it affixed under its responsibility.**

**4.2 The manufacturer shall keep the certificates of conformity at the disposal of the national authorities for 10 years after the battery has been placed on the market.**

#### **5. CE marking and EU declaration of conformity**

**The manufacturer shall affix the CE marking and, under the responsibility of the notified body referred to in point 4, the latter's identification number to each battery that satisfies the applicable requirements referred to in point 1, or, where that is not possible or not warranted due to the nature of the battery, to the packaging and the documents accompanying the battery.**

*The manufacturer shall draw up an EU declaration of conformity in accordance with Article 18 for each battery and keep it at the disposal of the national authorities for 10 years after the battery has been placed on the market. The EU declaration of conformity shall identify the battery for which it has been drawn up.*

*A copy of the EU declaration of conformity shall be made available to the national authorities upon request.*

**6. *Manufacturer's authorised representative***

*The manufacturer's obligations set out in points 2.2, 4.2 and 5 may be fulfilled by the manufacturer's authorised representative, on the manufacturer's behalf and under the manufacturer's responsibility, provided that they are specified in the mandate.*

## Annex IX

EU Declaration of conformity No\* ...

\* *(identification number of the declaration)*

1. Battery model (product, *category*, *and* batch or serial number):
2. Name and address of the manufacturer and, where applicable, *its* authorised representative:
3. This declaration of conformity is issued under the sole responsibility of the manufacturer
4. Object of the declaration (identification of the battery allowing traceability, *and which may, where appropriate, include an image of the battery*): description of the battery.
5. The object of the declaration described in point 4 is in conformity with the relevant Union harmonisation legislation: ... (reference to the other Union acts applied).
6. References to the relevant harmonised standards or the common specifications used or references to the other technical specifications in relation to which conformity is declared:
7. The notified body ... (name, address, number) ... performed ... (description of intervention) ... and issued the certificate(s): ... (details, including its date, and, where appropriate, information on the duration and conditions of its validity).
8. Additional information

Signed for and on behalf of:

(place and date of issue):

(name, function) (signature)

## Annex X

### List of raw materials and risk categories

1. Raw materials:
  - (a) cobalt;
  - (b) natural graphite;
  - (c) lithium;
  - (d) nickel;
  - (e) chemical compounds based on the raw materials listed in points (a) to **(d)** which are necessary for the manufacturing of the active materials of batteries.
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;*
- (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;*

3. The international instruments covering the risks referred to in point 2 include:

- (a) Ten Principles of the United Nations Global Compact;
  - (b) UNEP Guidelines for Social Life Cycle Assessment of Products;
  - (c) Convention on Biological Diversity, *in particular* Decision COP VIII/28- Voluntary guidelines on Biodiversity-Inclusive impact assessment;
- (ca) *UN Paris Agreement;*
  - (cb) *Eight fundamental ILO Conventions as defined under the ILO Declaration on Fundamental Principles and Rights at work;*
  - (cc) *any other international environmental conventions that are binding upon the Union or its Member States,*

█  
*(e-b) ILO Declaration on Fundamental Principles and Rights at Work;*

*(e-c) The International Bill of Human Rights, including the international covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;*

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█

**3a.** *The internationally recognized due diligence principles applicable to the due diligence requirements laid down in Article 39 of this Regulation:*

*(a) The International Bill of Human Rights, including the international covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;*

*(b) UN Guiding Principles for Businesses and Human Rights;*

*(c) OECD Guidelines for Multinational Enterprises;*

*(d) ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;*

*(e) OECD Due Diligence Guidance for Responsible Business Conduct;*

*(f) OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.*

█

## Annex XI

### Calculation of collection rates of waste portable batteries *and waste LMT batteries*

1. Producers or, where appointed in accordance with Article 47a(1), producer responsibility organisations acting on their behalf, and Member States shall calculate the collection rate as the percentage obtained by dividing the weight of waste ■ batteries ■ , collected in accordance with Article 48 and Article 55, respectively, in a given calendar year in a Member State by the average weight of such batteries that producers either *make available on the market* directly to end-users or deliver to third parties in order to *make available on the market* them to end-users in that Member State during *the 3 preceding calendar years*. *These collection rates shall be calculated for portable batteries, on the one hand, in accordance with Article 48, and for LMT batteries, on the other hand, in accordance with Article 48a.*

<i>Year</i>	<i>Data collections</i>		<i>Calculations</i>	<i>Reporting requirement</i>
<i>Year 1</i>	<i>Sales in year 1 (S1)</i>			
<i>Year 2</i>	<i>Sales in year 2 (S2)</i>	-	-	
<i>Year 3</i>	<i>Sales in year 3 (S3)</i>			
<i>Year 4</i>	<i>Sales in year 4 (S4)</i>	<i>Collection in year 4 (C4)</i>	<i>Collection rate (CR4)=3*C4/(S1+S2+S3)</i>	<i>CR4</i>
<i>Year 5</i>	<i>Sales in year 5 (S5)</i>	<i>Collection in year 5 (C5)</i>	<i>Collection rate (CR5)=3*C5/(S2+S3+S4)</i>	<i>CR5</i>
<i>Etc.</i>	<i>Etc.</i>	<i>Etc.</i>	<i>Etc.</i>	



2. Producers or, where appointed in accordance with Article **47a(1)**, producer responsibility organisations acting on their behalf, and Member States shall calculate the annual sales of ■ batteries ■ to end-users in a given year, as the weight of such batteries made available on the market for the first time *within the* territory of the Member State in the year concerned, excluding any ■ batteries that have left the territory of that Member State in that year, before being sold to the end -users. ***These sales are calculated for portable batteries on the one hand and for LMT batteries on the other.***
3. For each battery, only the first time it is made available on the market in a Member State shall be counted.
4. The calculation provided for in points **1 and 2** shall be based on collected data or statistically significant estimates based on collected data.

## Annex XII

### ***Storage and treatment, including recycling, requirements***

#### Part A: ***Storage***, treatment requirements

1. Treatment shall, as a minimum, include removal of all fluids and acids.
2. Treatment and any storage, including temporary storage, at treatment facilities, ***including recycling facilities*** shall take place in sites with impermeable surfaces and suitable weatherproof covering or in suitable containers.
3. Waste batteries in treatment facilities, ***including recycling facilities***, shall be stored in such a way that waste batteries are not mixed with waste from conductive or combustible materials.
4. Special precautions and safety measures shall be in place for the treatment of waste lithium based batteries ***during handling, sorting and storage. Such measures shall include protection from exposure to:***
  - (a) ***excessive heat (such as high temperatures, fire or direct sunlight),***
  - (b) ***water (stored in dry place, protected from precipitation and flooding),***
  - (c) ***any crushing or physical damage.***

*They shall be stored in their normally installed orientation (never inverted) in well-ventilated areas and covered with a high voltage rubber isolation. Storage facilities of waste lithium based batteries shall be marked with a warning sign.*

- 4a. Mercury and cadmium shall be separated during treatment into an identifiable stream, which shall be safely immobilised and disposed and cannot cause adverse effects on humans or the environment.*

#### Part B: **Minimum** recycling efficiencies

1. No later than **31 December** 2025, recycling **■** shall achieve the following minimum recycling efficiencies:
  - (a) recycling of 75 % by average weight of lead-acid batteries;
  - (b) recycling of 65 % by average weight of lithium-based batteries;
  - (ba) recycling of 80 % by average weight of nickel-cadmium batteries;**
  - (c) recycling of 50 % by average weight of other waste batteries.

2. No later than **31 December 2030**, recycling ■ shall achieve the following minimum recycling efficiencies:

- (a) recycling of 80 % by average weight of lead-acid batteries;
- (b) recycling of 70 % by average weight of lithium-based batteries.

**Part C: *Minimum* levels of recovered materials**

1. No later than **31 December 2027**, all recycling ■ shall achieve the following *minimum* levels of materials recovery:

- (a) 90 % for cobalt;
- (b) 90 % for copper;
- (c) 90 % for lead;
- (d) **50** % for lithium;
- (e) 90 % for nickel.

2. No later than *31 December 2031*, all recycling ■ shall achieve the following *minimum* levels of materials recovery:

- (a) 95 % for cobalt;
- (b) 95 % for copper;
- (c) 95 % for lead;
- (d) **80** % for lithium;
- (e) 95 % for nickel.

## Annex XIII

### Information to be *included* in the *battery passport*

■

#### 1. PUBLICLY ACCESSIBLE *INFORMATION RELATING TO THE BATTERY MODEL*

*A battery passport shall include the following information relating to the battery model which shall be accessible to the public:*

- (a) *Information specified in Part A of Annex VI;*
- (b) *Material composition of the battery, including its chemistry, hazardous substances contained in the battery other than mercury, cadmium or lead, and critical raw materials contained in the battery;*

■

■

■

- (f) Carbon footprint information *referred to in Articles 7(1) and 7(2);*

- (g) Information on responsible sourcing as indicated in the *report on its due diligence policies referred to in Article 45e(3)*
- (h) Recycled content information as *contained* in the *documentation referred to in Article 8(1)*;
- (ha) *The share of renewable content;***
- (i) Rated capacity (in Ah);
- (j) Minimal, nominal and maximum voltage, with temperature ranges when relevant;
- (k) Original power capability (in Watts) and limits, with temperature range when relevant;
- (l) Expected battery lifetime expressed in cycles, and reference test used;
- (m) Capacity threshold for exhaustion (only for *electric vehicle* batteries);
- (n) Temperature range the battery can withstand when not in use (reference test);
- (o) Period for which the commercial warranty for the calendar life applies;
- (p) Initial round trip energy efficiency and at 50% of cycle-life;

- (q) Internal battery cell and pack resistance;
- (r) C-rate of relevant cycle-life test.
- (s) *The labelling requirements laid down in articles 13(3) and (4);*
- (t) *The EU declaration of conformity referred to in Article 18;*
- (u) *The information regarding the prevention and management of waste batteries laid down in point (a) to (f) of Article 60(1).*

2. ***INFORMATION RELATING TO THE BATTERY MODEL*** ACCESSIBLE ONLY TO ***INTERESTED PERSONS*** AND THE COMMISSION

*A battery passport shall include the following information relating to the battery model which shall be accessible only to interested persons and the Commission:*

- (a) Detailed composition, including materials used in the cathode, anode and electrolyte;
- (b) Part numbers for components and contact details of sources for replacement spares;
- (c) Dismantling information, including at least:
  - Exploded diagrams of the battery system/pack showing the location of battery cells,
  - Disassembly sequences,



- Type and number of fastening techniques to be unlocked,
- Tools required for disassembly,
- Warnings if risk of damaging parts exist,
- Amount of cells used and layout;

(d) Safety measures.

3. **INFORMATION** ACCESSIBLE ONLY TO NOTIFIED BODIES, MARKET SURVEILLANCE AUTHORITIES AND THE COMMISSION

*A battery passport shall include the following information relating to the battery model which shall be accessible only to notified bodies, market surveillance authorities and the Commission:*

- (a) Results of tests reports proving compliance with the requirements *set* out in this Regulation *or any* implementing or delegated *act adopted on its basis*.

**4. INFORMATION AND DATA RELATING TO AN INDIVIDUAL BATTERY  
ACCESSIBLE ONLY TO INTERESTED PERSONS**

*A battery passport shall include the following specific information and data relating to an individual battery which shall be accessible only to interested persons:*

- (a) the values for performance and durability parameters referred to in Article 10(1), when the battery is placed on the market and when it is subject to changes in its status;*
- (aa) information on the state of health of the battery pursuant to Article 14;*
- (b) information on the status of the battery, defined as 'original', 'repurposed', 'reused', 'remanufactured' or 'waste';*
- (c) information and data as a result of its use, including the number of charging and discharging cycles and negative events, such as accidents, as well as periodically recorded information on the operating environmental conditions, including temperature, and on the state of charge.*

## Annex XIV

### Correlation table

Directive 2006/66/EC	This Regulation
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Article 20(2)	Article 60
Article 20(3)	Article 60(4)
Article 21	Article 20 Rules and conditions for affixing the CE marking;  Article 13, Annex VI Part A, B, C
Article 21(1)	Article 13(3)
Article 21(2)	Article 13(2)
Article 21(3)	Article 13(4)
Article 21(4)	Article 13(3)
Article 21(5)	Article 13(3)
Article 21(6)	---
Article 21(7)	---
Article 22a	---

Article 23 Review	Article 55(3), Article 77
Article 23(1)	Article 77(1)
Article 23(2)	Article 77(2)
Article 23(2)(a)	---
Article 23(2)(b)	Article 55(3); Article 77 2(d)
Article 23(2)(c)	Article 56(4)
Article 23(3)	Article 77(2) second subparagraph
Article 23a	Article 73
Article 23a(1)	Article 73(1)
Article 23a(2)	Article 73(2)
Article 23a(3)	Article 73(3)
Article 23a(4)	Article 73(5)
Article 23a(5)	Article 73(6)
Article 24	Article 74
Article 24(1)	Article 74(1)

Article 24(2)	Article 74(3)
Article 24(2), second subparagraph	Article 74(3) second subparagraph
Article 25	Article 76
Article 26	---
Article 27	---
Article 28	Article 78
Article 29	Article 79
Article 30	--
Annex I	Annex XI
Annex II	Annex VI Part B
Annex III	Annex XII
Annex III Part A	Annex XII Part A
Annex III Part B	Annex XII Part B
Annex IV Procedural requirements for registration	---

## *Annex XIV (new)*

### *Minimum requirements for shipments of used batteries*

- 1. In order to distinguish between used and waste batteries, where the holder, meaning the natural or legal person in possession of the used batteries or the waste batteries claims that it intends to ship or is shipping used batteries and not waste, that holder shall be required to have available the following to substantiate this claim:*
  - (a) a copy of the invoice and contract relating to the sale or transfer of ownership of the battery which states that the equipment is destined for direct re-use and that it is fully functional;*
  - (b) evidence of evaluation or testing in the form of a copy of the records (certificate of testing, proof of functionality) on every item within the consignment and a protocol containing all record information according to point 3;*
  - (c) a declaration made by the holder who arranges the transport of the used battery that none of the material or equipment within the consignment is waste as defined by Article 3(1) of Directive (EU) 2008/98; and*
  - (d) appropriate protection against damage during transportation, loading and unloading in particular through sufficient packaging and appropriate stacking of the load.*

2. *By way of derogation, point 1(a) and (b) and point 3 do not apply where it is documented by conclusive proof that the shipment is taking place in the framework of a business-to-business transfer agreement and that:*
- (a) the used battery is sent back to the producer or a third party acting on his behalf as defective for repair under warranty with the intention of re-use; or*
  - (b) the used battery for professional use is sent to the producer or a third party acting on his behalf or a third-party facility in countries to which Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations applies, for refurbishment or repair under a valid contract with the intention of re-use; or*
  - (c) the defective used battery for professional use is sent to the producer or a third party acting on his behalf for root cause analysis under a valid contract, in cases where such an analysis can only be conducted by the producer or third parties acting on his behalf.*

3. *In order to demonstrate that the object being shipped constitute used batteries, rather than waste, its holder shall carry out the following steps for testing and record keeping for used batteries:*

*Step 1: Testing*

- (a) *The battery shall be tested for its State of Health and the presence of hazardous substances shall be evaluated;*
- (b) *Results of evaluation and testing shall be recorded.*

*Step 2: Record*

- (a) *The record shall be fixed securely but not permanently on either the used battery itself (if not packed) or on the packaging so it can be read without unpacking the equipment.*
- (b) *The record shall contain the following information:*
- *name of item,*
  - *identification number of the item, where applicable,*
  - *year of production, if available,*
  - *name and address of the company responsible for testing the State of Health,*
  - *result of tests as described in step 1 (including the date of the test),*
  - *kind of tests performed.*



4. *In addition to the documentation requested in points 1, 2 and 3, every load (e.g. shipping container, lorry) of used batteries shall be accompanied by:*
- (a) a relevant transport document;*
  - (b) a declaration by the liable person on its responsibility.*
5. *In the absence of proof that an object is used battery, and not waste, through the appropriate documentation required in points 1, 2, 3 and 4 and of appropriate protection against damage during transportation, loading and unloading in particular through sufficient packaging and appropriate stacking of the load, which are the obligations of the holder who arranges the transport, the object shall be considered waste and it shall be presumed that the load comprises an illegal shipment. In these circumstances the load will be dealt with in accordance with Articles 24 and 25 of Regulation (EC) No 1013/2006.*
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