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With a view to the meeting of the Ministers of Environment on 10 June 2021, delegations will find attached a progress report prepared by the Presidency.

**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) 2019/1020**

**Progress report**

**Environment Council 10 June 2021**

**I. INTRODUCTION**

On 10 December 2020, the Commission adopted the proposal for a Regulation concerning batteries and waste batteries, with a view to replace the current Batteries Directive. The proposal aims to modernise the EU's legislative framework for batteries, in the context of increased demand for battery development and production.

The Commission's proposal is based on Article 114 TFEU.

The Commission identifies as main objectives of the proposal: strengthening the functioning of the internal market; promoting a circular economy; and reducing environmental and social impacts throughout all stages of the battery life cycle.

It is an integral part of the deliverables of the European Green Deal and builds upon the Commission's initiatives such as the Strategic Action Plan on Batteries, the new Circular Economy Action Plan, the new Industrial Strategy for Europe and the Sustainable and Smart Mobility Strategy. The proposal also follows the evaluation of the current Batteries Directive, published in April 2019. To this end, the Commission proposes a single Regulation covering the entire lifecycle of batteries, setting out:

- Sustainability and safety requirements, such as carbon footprint rules, minimum recycled content, performance and durability criteria, and safety parameters;
- Labelling and information requirements, such as the storing of information on sustainability, and data on the state of health and expected battery lifetime;

- End-of-life management provisions, such as requirements on extended producer responsibility, organisation of and targets for collection of waste batteries, recycling efficiency and materials recovery;
- Obligations of economic operators regarding the enforcement of product requirements and due diligence schemes;
- Electronic system for the exchange of information and the creation of the battery passport;
- Mandatory green public procurement;
- Other provisions aiming at facilitating enforcement, rules on conformity assessment, notification of conformity assessment bodies, market surveillance and economic instruments.

The proposed Regulation is composed of 79 Articles, 14 Annexes and foresees more than 30 secondary legislation acts.

In the European Parliament, following a decision by the Conference of the Presidents of 29 April 2021, the committee responsible for the proposal is the Committee on the Environment, Public Health and Food Safety (ENVI), with the Committee on Industry, Research and Energy (ITRE) and the Committee on Internal Market and Consumer Protection (IMCO) as Associated committees, in accordance with Rule 57 of the Rules of Procedure of the European Parliament, and with the Committee on Transport and Tourism (TRAN) providing an opinion. The European Parliament is expected to vote its position in the plenary session of February 2022.

In its conclusions of 17 December 2020<sup>1</sup> on making the recovery circular and green, the Council welcomed "the proposal of the Commission for a new regulatory framework for batteries that aims at ensuring a safe, circular and sustainable battery value chain for all batteries and will introduce measures for value retention and optimisation from design and production through use and re-use, remanufacturing and recycling and at incentivising, where appropriate, the use of rechargeable batteries".

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<sup>1</sup> doc. 14167/2020

## II. WORK WITHIN THE COUNCIL

The examination of the proposal is being carried out in the Working Party on the Environment (WPE). Its presentation took place under the German Presidency, at the informal videoconference (VTC) of the WPE on 14 December 2020. The Commission also presented its proposal at the Environment Council on 17 December 2020.

During the Portuguese Presidency, so far 19 VTC of the WPE have been dedicated to the proposal. It was also presented to the Working Party on Competitiveness and Growth (Industry) on 13 January 2021.

The Impact Assessment was presented by the Commission and discussed at the WPE VTC on 7-8 January 2021. On that occasion, the analysis of the proposal began with Chapter II on Sustainability and safety requirements (Articles 6 to 12, Annexes I to V and relevant definitions) which continued to be discussed at the meeting of 18-19 January 2021, as well as Article 71 on the Procedure for amending restrictions on hazardous substances, due to its relevance for the chapter.

Chapter III on Labelling and information requirements (Articles 13, 14 and Annexes VI and VII and relevant definitions) was also addressed on 19 January 2021.

The WPE analysed Chapter VII on End-of-Life management of batteries (Articles 46 to 63, Annexes XI, XII and relevant definitions) at the meetings on 2, 12, 15 and 19 February 2021.

On 2 February 2021, the Commission also informed the WPE on the ongoing work on the UN Global Technical Regulation for in-vehicle battery durability.

The provisions on Due diligence of the supply chain (Articles 39, 72 and Annex X) were discussed on 19 February and 1 March 2021.

On 1 March 2021, the WPE also addressed the legal basis of the proposal and the 2KWh capacity threshold for the requirements applicable to electric vehicle batteries and rechargeable industrial batteries with internal storage, based on non-papers provided by the Commission. Green public procurement (Article 70) was discussed as well.

On 15 March 2021, the WPE addressed Chapter VIII on Electronic exchange of information (Articles 64, 65 and Annex XIII).

Chapter IV on the conformity of batteries (Articles 15 to 20, Annexes VIII and IX) and Chapter V on Notification of conformity assessment bodies (Articles 21 to 37) and relevant definitions were discussed on 22 March 2021.

At its meeting on 29 March 2021, the WPE considered Chapter VI on Obligations of economic operators other than the obligations in Chapter VII (Articles 38 to 45, with the exception of the previously discussed Article 39), Chapter IX on Union market surveillance, control of batteries entering the Union market and Union safeguard procedures (Articles 66 to 69) and Chapter XII on Amendments (Article 75).

On 13 April 2021, the WPE concluded the first reading of the Articles by addressing Chapter I on General provisions (Articles 1 to 5) and Chapter XIII on Final provisions (Articles 76 to 79).

The Presidency considered that it would be premature to address the recitals before drafting proposals on the Articles had been discussed.

At the Informal videoconference of Environment Ministers on 18 March 2021, an orientation debate took place on the proposed Regulation aimed at obtaining political guidance on the way forward for the negotiations. The debate focused on the legal basis and scope of the proposal, the sustainability and safety requirements, provisions on supply chain due diligence and end-of-life management.

After the conclusion of the first reading of the Articles, further discussions have since then been guided by Presidency non-papers reflecting the political guidance provided by Ministers, the discussions held so far and additional complementary written comments by Member States. In its non-papers, the Presidency has aimed to summarise the main issues raised by the Member States, present alternative proposals where appropriate at the stage of the discussion and identify questions on issues requiring additional feedback from Member States. Member States were therefore invited to respond to the proposals made and/or to present concrete drafting proposals for the issues identified in the non-papers and for other issues they would consider necessary to address.

The Presidency has opted to focus on Chapter II on Sustainability and safety requirements and on Chapter VII on End-of-life management of batteries, as they contain key provisions of the Regulation proposal.

Two WPE meetings were dedicated to the Presidency non-paper on Chapter II<sup>2</sup> (20 and 21 April 2021). On 21 April 2021, the WPE also addressed a possible cross-cutting approach to batteries of light means of transport.

The Presidency non-paper on Chapter VII<sup>3</sup> was discussed at five WPE meetings (27 and 28 April, 6, 11 and 20 May 2021).

At its meeting on 26 May 2021, the WPE further discussed Chapter VII, with a presentation by the Commission on the linkages between Article 8A of the Waste Framework Directive (WFD) and the proposed provisions on Extended Producer Responsibility (EPR) under the proposed Regulation. The Presidency intends to return to this topic in June, as well as to have a discussion on repurposing and remanufacturing of batteries, in order to obtain concrete feedback from Member States on possible ways forward. Also in June, the Commission is expected to present to the WPE the Joint Research Centre study on batteries of light means of transport and the Council Legal Service may present its opinion on the legal basis of the proposal.

In addition to the extensive presentations made in the WPE, the Commission has presented non-papers on “the legal basis, choice of the legal instrument and margin of manoeuvre for Member States in the new legislation on batteries”<sup>4</sup> and on “the 2kWh capacity threshold”<sup>5</sup>. The Commission has also provided a “correlation table of EPR requirements in Article 8a of the WFD and EPR obligations under the Batteries Directive and the Battery Regulation Proposal”<sup>6</sup>, and is expected to share a non-paper on repurposing and remanufacturing of batteries in view of the WPE discussions in June.

Member States have indicated scrutiny reservations on all or parts of the proposal and have emphasised the need to coordinate their positions between several entities responsible for the matters regulated by the proposal. Member States have also requested the opinion of Council Legal Service on the legal basis of the proposal.

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<sup>2</sup> Document 4964/2021

<sup>3</sup> Document 5372/2021

<sup>4</sup> Document 635/2021 REV 1

<sup>5</sup> Document 2440/2021

<sup>6</sup> Document 6858/2021

Throughout the discussions, the Presidency has sought to provide Member States with the opportunity to obtain detailed clarifications from the Commission on the full extent of the proposal, due to its technical complexity, innovative nature and broad scope. The careful analysis of the proposal during weekly meetings and follow-up comments sent by Member States have made it possible to identify the main issues of concern in each chapter of the proposed Regulation. Furthermore, the additional detailed discussion on Chapter II on Sustainability and safety requirements and on Chapter VII on End-of-life management of batteries has resulted in the identification of issues that need to be addressed and possible ways forward.

### **III. SUBSTANCE OF DISCUSSIONS HELD**

On the occasion of the Informal videoconference of Environment Ministers on 18 March 2021, the Member States welcomed the proposal for a Regulation on batteries and waste batteries. Ministers highlighted the innovative and ambitious nature of the proposal and the importance of the EU having a future-proof legal framework on batteries, so that decarbonisation objectives can be reached, while also ensuring the sustainability of batteries throughout their lifecycle.

While highlighting the importance of having a well-functioning internal market for batteries, Ministers expressed interest in exploring the possibility of having a double legal basis (internal market and environment), considering the environmental objectives pursued by the proposed Regulation.

Regarding the scope of the proposal, several delegations called for anticipating the setting of a collection target for batteries of light means of transport. Concerning the sustainability and safety requirements and the due diligence provisions, while recognising their importance, some delegations expressed concerns regarding the timings and the methodologies proposed by the Commission and the possible administrative burden. Regarding end-of-life management, several delegations questioned the feasibility of reaching the targets within the timetable proposed.

The discussions at the WPE have made it possible to analyse the proposal in detail and to identify a number of issues which need to be addressed with a view to the adoption of a general approach. **The Presidency highlights the following issues as being of particular importance, without prejudice to other points of interest of a more technical nature and further contributions by individual Member States:**

## Legal basis

A large number of Member States questioned the Commission's choice of a single legal basis on article 114 TFEU and requested the opinion of the Council Legal Service on the matter. Member States expressed interest in exploring the possibility of a double legal basis by adding article 192 TFEU, as they considered environmental concerns are also at the core of the proposal. The reference to article 114 TFEU was particularly questioned regarding chapter VII on end-of-life management of batteries. It was highlighted that the current Batteries Directive is based on a double legal basis, with the equivalent articles to 192 and 114 TFEU.

## General provisions (Chapter I)

Regarding the **Definitions (Article 2)** Member States requested alignment as far as possible with the definitions used in already existing relevant legislation. Some Member States questioned the rationale for identifying the minimum threshold of 5 kg in the definition of portable battery. Member States expressed support for the changes proposed by the Presidency to the following definitions: battery with internal storage (6); hazardous substances (41); producer (37); producer responsibility organisation (39); recycler (46); deleting "level of recycling" (48); have a distinct "authorised representative" (53) in what concerns Chapter VII. In addition, Member States considered it necessary to introduce a definition for "remanufacturing".

Some Member States requested the extension of the deadline for notifying the Commission of the **Competent Authority (Article 5)**.

Given its cross-cutting nature, the **2KWh capacity threshold** for the requirements applicable to electric vehicle batteries and rechargeable industrial batteries with internal storage, was also questioned. The Commission presented a non-paper<sup>7</sup> justifying the decision based on the cost-benefit analysis presented in the impact assessment.

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<sup>7</sup> Document 2440/2021



As regards the approach to **batteries of light means of transport**, the Presidency asked Member States whether a reference to the categories of vehicles covered by Regulation (EU) 168/2013 would have merit; Member States, however, felt that such an approach would not allow all categories of batteries of light means of transport to be covered. The Commission has reported that it has requested the Joint Research Centre (JRC) to prepare a report on batteries of light means of transport. The JRC report is expected to allow for the introduction of a new “in-between” battery category for light means of transport, as well as better informed capacity and weight thresholds between portable and LMT and between LMT and EV batteries. Further consideration is expected to be given to the topic once the document is presented to the WPE.

### **Sustainability and safety requirements (Chapter II and Article 71)**

Member States questioned the need and added value of new specific provisions on the **restrictions of hazardous substances in relation to batteries (Article 6, Annex I and Article 71)**, considering the existing procedures under the REACH Regulation. Member States expressed concerns about duplicating existing legislation and structures. Member States also rejected the lack of the possibility of initiating the procedure as provided for under Article 71, which therefore differs from the procedure established under the REACH Regulation. The importance of involving waste experts was also mentioned. The use of a delegated act to amend the restrictions in Annex I was also questioned. Member States did not consider it sufficient to introduce a new Article providing for the consultation of the Waste Committee before the Commission requests ECHA to prepare a dossier in accordance with Article 71. Instead, Member States expressed interest in exploring the possibility of deleting Article 71 and referring to the established restriction procedure for amending restrictions on hazardous substances in the REACH Regulation.

The Commission justified the need to include specific provisions under the Batteries Regulation by pointing to the fact that the REACH Regulation does not cover waste, as well as to the specificities of batteries and the more limited number of substances at stake. It also defended the need for a robust and agile procedure for amending restrictions on hazardous substances, and pointed out that Member States, specifically waste experts, would be consulted prior to the adoption of the delegated act, as indicated in Article 73(4).

Different views were expressed on the **carbon footprint requirements (Article 7, Annex II)** and the proposed timings. While some Member States expressed support for the approach proposed by the Commission, several Member States raised concerns regarding the impacts on industry and favoured longer periods for adjusting to the requirements, thereby providing enough time after the adoption of the calculation methodology.

Regarding **recycled content (Article 8)**, Member States considered it difficult to assess the impact and feasibility of the minimum targets set for recovered cobalt, lead, lithium or nickel before adopting a methodology for their calculation and verification, considering the uncertainty around the availability of sufficient amounts of recycled materials. The Commission explained the stepwise approach proposed and the possibility of revising the targets through secondary legislation so as to maintain the proposed calendar and thus provide market certainty. Some Member States supported longer periods for adjusting to the requirements and the reduction of the administrative burden of their application. Some Member States proposed the introduction of a closed loop system for the recycled content while other expressed reservations due to the implications for the feasibility of reaching the proposed targets.

There was general support for the establishment of **performance and durability requirements for portable batteries (Article 9 and Annex III)**, although different views were expressed on the time required by economic operators and authorities to adjust to them.

Regarding **performance and durability requirements for industrial batteries and EV batteries (Article 10 and Annex IV)** Member States questioned the scope of application, namely the exclusion of batteries from light means of transport. Furthermore, it was proposed that the delegated act would not be limited to the criteria established under Annex IV but would include the possibility of revising the requirements, if needed. The Commission clarified the interlinkages between these provisions and the UN Regulations on in-vehicle battery durability and Battery Safety Regulations.

With regard to **Removability and replaceability of portable batteries (Article 11)**, some Member States expressed concern over possible loopholes due to some of the exemptions foreseen and considered it important to set the planned date for the adoption of the guidance so as to facilitate the harmonised application of the derogations.

Member States questioned the scope of **Article 12 and Annex V on Safety of stationary battery energy storage systems** and proposed applying the safety provisions throughout all stages of the battery lifecycle. Member States also proposed supplementing the safety parameters set out in Annex V. The Commission argued that the scope was based on the impact assessment and noted that the safety parameters for electric vehicles (EV) batteries were covered by EU vehicle type-approval framework legislation and that the safety of the collection of batteries was dealt with under Chapter VII. The Commission also clarified that the safety of portable batteries of general use is covered by the General Product Safety Directive 2001/95/EC.

Member States supported a number of changes of a technical nature proposed by the Presidency in its non-paper<sup>8</sup>.

### **Labelling and information requirements (Chapter III)**

There were concerns about the feasibility of the proposed deadlines for the entry into force of the obligations on the **labelling of batteries (Article 13 and Annex VI)**, given the short timeframe envisaged for the adoption of secondary legislation. Some Member States questioned the relevance of the information to be included in view of the associated administrative burden, while others proposed to include additional information, such as the weight and chemical composition of batteries. The Commission offered to present a comparative document setting out the different provisions on information that should be contained on labels, QR codes and digital passports of batteries. The Commission confirmed that the absence of a reference to mercury in Article 13(4), was an oversight to be rectified by a corrigendum. Regarding the **Information on the state of health and expected lifetime of batteries (Article 14 and Annex VII)** one Member State requested the scope of the Article to be extended to batteries of electronic products. The Commission justified including only industrial batteries and batteries for electric vehicles, as these are the batteries with a potential second life, for which the state of health is relevant information.

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<sup>8</sup> Document 4964/2021

## **Conformity of batteries and Notification of conformity assessment bodies (Chapters IV and V)**

Several MS presented scrutiny reservations on Chapter IV on Conformity of batteries (Articles 15 to 20 and Annex VIII and IX) and on Chapter V on Notification of conformity assessment bodies (Articles 21 to 37) noting that internal consultations were still ongoing. Several Member States advocated that the mechanism provided for under **Common specifications (Article 16)** only be used as a fallback option, in exceptional cases or extreme delays, expressing their preference for adopting harmonised standards. The Commission confirmed its intention of only resorting to the procedure in exceptional cases when the absence of standards could put at risk the implementation of the Regulation, or temporarily. Regarding chapter V, the Commission highlighted the importance of the provisions to reinforce the independence of conformity assessment bodies, particularly with regard to the requirements verified by external entities, such as carbon footprint, recycled content and due diligence of the supply chain.

### **Obligations of economic operators other than the obligations in Chapter VII (Chapter VI)**

Members Stated presented several questions of a technical nature. Discussions focused mainly on Obligations of authorised representatives (Article 40) with Member States considering it important to distinguish the definition of authorised representatives from that used in the WEE Directive. The Commission noted that no competence was attributed to the authorised representatives under Chapter VII.

Article 39 is addressed below under the provisions on due diligence.

### **End-of-life management of batteries (Chapter VII)**

Member States highlighted the fundamental importance of this chapter. The main issues of concern related to the links with existing waste legislation, namely the Waste Framework Directive, and the need for flexibility in relation to existing and well-functioning producers' responsibility schemes already implemented nationally. Different views were expressed on the level of ambition of the targets and deadlines for the collection of waste portable batteries. Overall, Member States questioned the exclusion of batteries of light means of transport from the collection targets. Further clarification was requested on the provisions regarding repurposing and remanufacturing of batteries. Moreover, Member States provided further feedback on a number of questions of a technical nature identified in the Presidency non-paper.

Regarding **Extended Producer Responsibility (Article 47)** Member States questioned the need to establish specific measures in addition to the requirements defined under Articles 8 and 8a of the Waste Framework Directive (WFD). They considered the Regulation's approach too prescriptive, requesting flexibility for the specificities of the various schemes already operating and well-functioning at national level. It was also viewed as contrary to the objective of the WFD of harmonization of Extended Producer Responsibility schemes across different waste streams. Some Member States expressed interest in including in the Regulation provisions that would be complementary to the WFD. It was also suggested to explore the possibility of the Regulation establishing minimum requirements and providing Member States the possibility to set complementary provisions. The same concerns were raised regarding the **Register of Producers (Article 46)** with Member States emphasising the need to accommodate for registration systems already in place nationally with their specificities. The Commission highlighted the importance of setting common rules in all Member States in order to promote circularity of batteries.

Concerning the **collection of waste portable batteries (Articles 48, 55 and Annex XI)**, there were different views expressed, with some Member States considering the deadlines too ambitious, some supporting the Commission's proposal and others expressing flexibility as regards a possible extension of the intermediate deadline. The Commission recognised the ambitious nature of the proposed targets, but considered them attainable based on the experiences and values already reported in some Member States. Some Member States questioned the calculation methodology for collection rates based on batteries available in the market, expressing support for a methodology based on batteries available for collection, in order to take account of the ever-longer lifespan of portable batteries. Some Member States also considered problematic the duplication of obligations for both producers and Member States regarding the fulfilment of the collection of waste batteries and highlighted the importance of the responsibility for achieving such targets being set in a clear way, considering that the legal instrument is a Regulation. It was proposed to delete Article 55, as it was considered that producers should be responsible for reaching such targets. The Commission opposed that deletion, considering the obligation on Member States necessary to ensure the enforceability of the collection targets.

A number of Member States contested the exclusion of waste batteries from light means of transport from the collection rates. The Commission reiterated that a JRC study on the topic is to be finalised during the legislative process, which could be a basis for further consideration with a view to setting a collection target for these batteries.

Regarding the **collection of waste automotive batteries, industrial batteries and electric vehicle batteries (Article 49)** some Member States requested the inclusion of an explicit collection target, or the possibility for Member States to decide on the introduction of a collection target at national level. The Commission considered that an explicit target for these types of batteries could not be below 100%.

Feedback was provided on a number of issues of a technical nature for clarification regarding the **obligations of distributors (Article 50), obligations of end users (Article 51), obligations of treatment facilities (Article 52), participation of public waste management authorities (Article 53) and participation of voluntary collection points (Article 54)**. Some Member States considered that collected batteries should only be handed over to producers or the producer responsibility organisations in order to ensure the sustainability of EPR schemes. On the other hand, the Commission highlighted the importance of opening the recycling market to new operators, in order to contribute to an increase in the collection of batteries. Member States also highlighted the difficulty of enforcing the obligation of separation of waste batteries by consumers.

Concerning **Treatment and recycling (Article 56 and Annex XII)**, Member States presented several proposals to complement Part A of Annex XII regarding specific precautions and safety measures for the storage and treatment of waste lithium-based batteries during handling, sorting and storage.

When discussing **Recycling efficiencies and material recovery targets (Article 57 and Annex XII)** Member States highlighted the linkages with the provisions on repurposing and remanufacturing and considered it necessary to have a clear definition of when a battery is considered to enter a recycling process. Several Member States contested the fact that the targets have already been set since their calculation methodology will only be defined later and it was proposed to include in the Regulation the principles that should guide the methodology. In addition, Member States considered that the recycling targets for 2025 should be conditional on the adoption of an implementing act setting out detailed rules for their calculation by the planned deadline. It was also proposed to allow the disposal of certain batteries that should not be recycled (e.g. batteries containing mercury).

Member States signaled the need to consider the provisions **on Shipment of waste batteries (Article 58)** in the light of the expected revision of the Waste Shipment Regulation. It was proposed to add a reference to batteries exported for repurposing and remanufacturing.

**Requirements related to the repurposing and remanufacturing of industrial batteries and electric-vehicle batteries (Article 59 and Annex VII)** were considered of particular importance. Member States insisted on the need to clarify the nature of these operations, the registration or licence procedures that operators should follow, the moment of application of the end of the waste status, and requested the introduction of a definition of “remanufacturing”. Member States expressed support for the framework put forward in the proposal, such as requiring repurposed and remanufacturing batteries to meet all applicable requirements and noted that it was essential that the EPR for batteries subject to these operations be clearly assigned. The WPE is expected to further discuss the matter having as a basis a non-paper the Commission is to prepare.

Member States considered that awareness raising campaigns among end users should be made mandatory under the scope of **End-of-life information (Article 60)**. Some Member States expressed concerns regarding the ‘visible fee’ showing the costs covered by the producer separately to the end-user at the point of sale of a new battery and proposed to delete that provision.

As regards **Reporting to the competent authorities (Article 61)** and **Reporting to the Commission (Article 62)**, Member States raised several questions, namely on the feasibility and responsibility of reporting on portable batteries which have left the territory of a Member State in the subsequent year and information sharing concerning waste management operations taking place in another Member State. Questions were raised in particular regarding the applicability of the obligation for Member State to report on recycling efficiencies and material recovery from batteries collected in their territory for Member States which do not have battery recycling installations. The Commission clarified that it followed the current reporting obligations (Decision 2008/763/EC) but recognised the complexity of the matter and the possible need to reinforce the provisions in order to guarantee that competent authorities can ensure the fulfilment of the obligation by the first operator of recycling facilities. Concerns were also expressed on the deadlines for the fulfilment of the reporting obligations.

Finally, regarding the **Application of Chapter VII (Article 63)** some Member States requested the postponement of the date of application of Chapter VII. The Commission underline the implications of such a postponement for several provisions of the Regulation.

In addition to the abovementioned issues, Member States supported a number of changes of a technical nature proposed by the Presidency in its non-paper<sup>9</sup>.

### **Electronic exchange of information (Chapter VIII)**

Overall, Member States welcomed the chapter. Member States' reactions focused mostly on clarification requests regarding the articulation between the **Electronic exchange system (Article 64 and Annex XIII) and the Battery passport (Article 65)** vis-à-vis other reporting and information obligations set out in Chapters III and VII. The Commission clarified that while the electronic exchange system will refer to the battery model, the battery passport will be a register specifically for each battery, containing a set of dynamic information in addition to the one foreseen under annex XIII. The Commission will share additional information on the interplay of the various provisions. Other issues of concern related to access to the information collected (notably by PROs and operators carrying out repair, repurposing or remanufacturing activities and by potential buyers) as well as the transfer of responsibility for the passport depending on the change of status of the battery.

### **Union market surveillance, control of batteries entering the Union market and Union safeguard procedures (Chapter IX) and Amendments (Chapter XII)**

Some Member States presented scrutiny reservations on the chapters. Interventions from Member States were minimal and consisted of clarification requests and very targeted proposals. The Commission highlighted the alignment of the provisions with the “new” legislative framework for products (NLF). Further consideration of the chapter would be necessary in order to assess potential issues of concern.

### **Green public procurement (Article 70)**

Member States generally welcomed the inclusion of the provisions on green public procurement in the Regulation. Questions were however raised with regard to the fulfilment of the obligations provided for under the Article before the adoption of the delegated acts establishing minimum mandatory green public procurement criteria or targets. COM noted that Member States could follow the requirements set out under Articles 7 to 10.

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<sup>9</sup> Document 5372/2021



### **Supply chain due diligence (Article 39, Article 72 and Annex X)**

Member States recognised the importance of the matter, but questioned the linkages with the upcoming legislative proposal on sustainable corporate governance and due diligence. Member States also expressed concern regarding the associated administrative burden, especially for SME, and the enforceability and verification of value chains in third countries. The Commission recognised the administrative procedures necessary for verification but noted that, according to the impact assessment, it was expected that only large companies would be targeted by the provisions. It also underlined the reference in recital 70 to the possible adaptation of the Regulation in the light of future legislative amendments.

In the discussion of Article 4 on Sustainability, safety, labelling and information requirements, the Commission clarified that the provisions on due diligence were not included under this Article as they are not strictly product requirements, but obligations on economic operators.

### **Delegated powers and committee procedure (Chapter XI)**

The delegated acts provided for under Article 73 were discussed throughout the analysis of the relevant Articles. Member States raised reservations regarding some of the delegated acts, specifically in the context of Chapter II, and in some cases the Presidency proposed to revise the delegation of powers. Overall, Member States expressed considerable concern regarding the deadlines proposed for the adoption of several delegated and implementing acts and the entry into force of the associated provisions.

### **Final provisions (Chapter XIII)**

Member States question the interplay between the repeal and transitional rules of the current Batteries Directive, the EPR requirements laid down under the WFD and the proposal Regulation.

The date of application of the Regulation (January 2022) was considered unrealistic, in particular considering the complexity of the negotiations on the Regulation, and Member States requested its postponement.

## **IV. CONCLUSION**

Under the current planning of the Portuguese Presidency, the WPE will have dedicated 21 informal videoconferences to the Batteries Regulation by the end of June.

The Presidency considers that the thorough analysis of the proposal has provided clarification on its full extent and has made it possible to identify the main issues of concern for the Member States, enabling future work needed towards the adoption of a general approach to be streamlined.

Based on discussions held so far, without prejudice to the further work necessary on the issues described under section III, the Presidency identifies the following main issues requiring further work, from a political and legal point of view:

- The legal basis
- The approach to be followed regarding batteries of light means of transport
- The procedure for amending restrictions on hazardous substances
- The deadlines proposed for the sustainability and safety requirements, associated with the extensive work necessary regarding secondary legislation
- The articulation with existing waste legislation and the level of flexibility for Member States regarding extended producer responsibility for batteries
- The level of ambition of the collection targets
- Due diligence provisions in the light of the upcoming legislative proposal on sustainable corporate governance and due diligence

The Portuguese Presidency is committed to working closely with the incoming Slovenian Presidency in order to facilitate the continuation of the discussions in the WPE and to ensure the smooth progress on the file in the Council. To that effect, the Presidency intends on working towards a compromise proposal for Chapter II and Chapter VII by the end of the semester.

The Presidency is sincerely grateful to the Commission for its excellent cooperation with the WPE and for the detailed explanations and the non-papers provided, as well as to the Member States for their commitment and valuable contributions during the weekly meetings and the additional extensive written comments submitted.

The COREPER is invited to take note of this progress report from the Presidency, with a view to submitting it to the Environment Council at its meeting on 10 June 2021.