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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
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Subject:	Batteries Regulation: Informal videoconference of the WPE on 25 October 2022 (am): Presidency steering note

With a view to the informal videoconference of the members of the WPE on 25 October 2022 (am), delegations will find attached a steering note from the Presidency.

Proposal for a Batteries Regulation – informal VTC WPE 25 October 2022

Steering note

Chapter VIa – Exemptions to SMEs, Chapter VII – Cross-border EPR scheme, Chapter VIII – Digital battery passport

Reflecting the discussions at the political trilogue on 11 October 2022 and having in mind new proposals made by the Commission, the Presidency organises an informal VTC WPE on 25 October 2022. The Presidency will seek feedback from the delegations on a proposed phrasing of exemptions for SMEs in Chapter VIa, a new article on the cross-border EPR scheme in Chapter VII (presented in WK 13774/2022, not included here, the Commission might provide a revised version ahead of or during the meeting reflecting comments received from delegations) and a modified wording of Chapter VIII on the digital battery passport.

Chapter VIa – Exemptions to SMEs

During the political trilogue on 11 October, a landing zone for the scope of the due diligence was identified. The due diligence would cover all batteries, while exemptions would be granted to SMEs. This topic has already been discussed with the WP, which called for a careful phrasing of the exemptions not to create loopholes. At the political trilogue, it was indicated that the following factors should be reflected in the wording of the exemption:

- the definition of SME, which takes into account number of employees, the turnover or balance sheet total, and ownership.
- the fact that there needs to be a level playing field between EU manufacturers and importers. Importers of batteries can have few employees but handle many batteries. Thus, an employee criterion would not work well for the regulation on batteries.
- the exemption for smaller companies in the proposal for a Directive on corporate sustainability due diligence (i.e. the one for the 'high-impact' sectors). That exemption makes a differentiation between EU companies and non-EU companies, for good reason, but such difference is not justified for the battery regulation. However, by taking the turnover number from that proposal, which is also used in other legislation, a good degree of coherence can still be ensured.

For further background, Annex A provides overview of the SMEs definitions as in different EU acts.

On that basis, the Presidency would like to receive feedback from the delegations on the below phrasing of the SMEs´exemption:

This [due diligence 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.

with the following two definitions to be added:

(a) '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[1] is exercised;

(b) 'parent company' means a company which controls one or more subsidiaries within the meaning of point (a);

The Presidency would like to know whether Member States can agree to the proposed phrasing for the SMEs exemption.

Chapter VIII – Digital battery passport/electronic exchange

Chapter VIII needs to be revisited in light of all the work done on the digital product passport in the ecodesign context over the last two years. The below proposed modification of Chapter II reflects the fact that:

- There is no need for two different IT systems (one for the model level and one for the individual unit level), this can be done in one and the same system,
- The implementation can rely more on standardisation than initially thought (with temporary common specifications as back-up if needed), related work is meanwhile already ongoing in a project under the Digital Europe Work Programme 2021-2022: https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/digital-2021-trust-01-digipass,
- battery passport and digital product passport should be aligned as much as possible.

In order to make the battery regulation proposal concerning battery passport coherent and jointly implementable with the digital product passport proposed under the proposed ecodesign for sustainable products regulation, the bellow modifications are proposed.

The Presidency would like to know whether Member States can agree to the proposed changes to Chapter VIII (and other related parts of the regulation) as indicated below.

Chapter VIII title

Change title to Digital battery passport

Article 64

Deleted [integrated in Article 65]

Article 65

Change article to :

Battery passport

1. From 48 months after entry into force of the Regulation each [*insert battery scope; see table below*] placed on the market or put into service shall have an electronic record ("battery passport").

2. The battery passport shall include information common to its battery model as specified in Part A of Annex XIII and information specific to the individual battery and usage of that battery, as specified in Part B of Annex XIII. [*depending on the scope*[1]*, add something along the lines of:* 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 or supplement Annex XIII to change the information that the battery passport shall provide in view of technical and scientific progress.

3. The battery passport shall be accessible through a QR code linking to a unique identifier that the economic operator placing the battery on the market shall attribute to it and which shall be printed or engraved on it.

   The QR code and the unique identifier shall comply with standard ('ISO/IEC') 15459:2015[2].

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

[1] In case of inclusion of:
- LMT batteries (e.g. article 7, 8 and 10 may apply later)
- Redox flow batteries (as for LMT + not all parameters may be relevant)
- Non-rechargeable batteries (several referenced articles don't apply and several parameters are not relevant)

[2] This standard (6 parts) is about the rules to create the QR code and unique identifier and also lists the organisations that can release them.

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 complete and up to date.

5. All information included in the product passport shall be based on open standards, developed with an inter-operable format 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 and the specific access rights shall be identified in the applicable implementing act adopted pursuant to paragraph 9, taking into account the general access rights specified in part A of Annex XIII.

7. For batteries that have been subject to preparation for re-use, preparation for repurposing, repurposing or remanufacturing, the responsibility for the information in the battery passport shall be transferred to the economic operator that places that battery on the market or that puts it into service. It shall be considered as a new battery passport and shall include the information referred to in Part B of Annex XIII transferred from the previous battery passport or passports.

   When there is a change in the status of a battery to a waste battery, the responsibility for the information in the battery passport 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.

8. A battery passport shall cease to exist when a new battery passport is established in accordance with paragraph 7, or after the battery has been recycled.

9. The Commission shall adopt implementing acts to:
   a. specify the actors that shall have access to information specified in Annex XIII in the battery passport and to what information they shall have access, taking into account the general access rights specified in part A of Annex XIII;
   b. the rules for accessing, sharing, managing, exploring, publishing and reusing of the information and data accessible through the battery passport.

Battery scope

Commission	*EP*	*Council*
rechargeable industrial batteries and electric vehicle batteries with internal storage and a capacity above 2 kWh (as proposed in Art 64)	*industrial battery with a capacity above 2 kWh, electric vehicle battery and light means of transport battery*	*each LMT battery and industrial battery with a capacity above 2 kWh, except those with exclusively external storage, and electric vehicle battery*
	+examine EP AM in row 763a: For light means of transport batteries, the battery passport shall contain the information described in Article 13 (5) points (a) to (d), and points (i) and (j), and updated information about the battery, linked to changes to its status.	

Article 65a

New article

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 ecodesign for sustainable products 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 free access to the battery passport based on their respective access rights set out in the applicable implementing act adopted pursuant to Article 65(9);

(c) the data included in the battery passport shall be stored by the economic operator responsible for its creation 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. For the purpose of this provision 'processing' means processing as defined in Article 3, point (2), of Regulation (EU) 2018/1807;

(e) the product passport shall remain available as specified in Article 65(8), including after an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created the product passport;

(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 applicable implementing act adopted pursuant to Article 65(9);

(g) data authentication, reliability and integrity shall be ensured;

(h) battery passports shall be designed and operated so that a high level of security and privacy is ensured and fraud is avoided.

Definitions

Add:

'unique identifier' means a unique string of characters for the identification of batteries that also enables a web link to the battery passport;

Annex XIII

Change title to Information to be stored in the battery passport

Content:

Part A: Information common to the battery model

1. PUBLICLY ACCESIBLE INFORMATION
   (a) – (r) *Council text, but 1) review battery scope in (a) and 2) add between (h) and (i) a new point 'The share of renewable content;' (from EP row 226a)*

2. INFORMATION ONLY TO ~~ACCREDITED~~ REMANUFACTURERS, SECOND-LIFE OPERATORS[3], RECYCLERS AND THE COMMISSION
   (a) [Detailed] Composition, including materials used in the cathode, anode and electrolyte;
   (b) – (d) [*Commission/EP/Council texts identical*]

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

[3] Council replaced these with 'economic operators', but that makes it too broad (would include e.g. competitor manufacturers)

(a) [*Commission/EP/Council texts identical*]

Part B: Information specific to the individual battery and usage of that battery

(a) information about 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;
(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;[4]
(d) information on the state of health of the battery pursuant to Article 14.[5]

Article 13

In the Council text paragraph 5 should be changed to:

From 48 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 ~~information on the respective battery model~~:

(a) for [*insert battery scope of the passport*] the battery passport in accordance with Article 65.~~by linking to the information on that model in the electronic exchange system referred to in Part A of Annex XIII.~~
(b) for other batteries [*etc. i.e. Council text*]

Annex VI

References to 'unique identifier' in the Council text should be removed.

Article 15(2)

Add Article 65a to the list of Articles cited.

Article 16(1)

Add Article 65a to the list of Articles cited.

[4] Based on Council text
[5] EP AM 389 row 765

Article 61

Paragraph 3, last subparagraph, last sentence ('Electronic systems for the reporting of information set up by the competent authorities shall be compatible and interoperable with the requirements of the information exchange system established pursuant to Article 64.') should be deleted. (this is in paragraph 8 of the Council text).

Article 62

Paragraph 1, 2nd subparagraph, 2nd sentence should be changed to:

'They shall make that information public electronically in the format established by the Commission in accordance with paragraph 5, using easily accessible data services ~~that are interoperable with the System established pursuant to Article 64~~.

Recitals

Change recital 93 and 94 as follows:

(93) In order to enhance transparency along supply and value chains for all stakeholders, it is necessary to provide for a battery passport ~~an electronic system~~ 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, 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. ~~That electronic system should be established in phases with a prototype system being made available to the concerned economic operators and Member States authorities at least a year in advance of the finalisation of the implementing measures defining the final features and the data access policy of the system to enable their input and timely compliance. Such data access policy should take into account the relevant principles established in EU legislation, including the Commission's proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act). 61 In order to ensure uniform conditions for the implementation of the electronic exchange system for battery information, implementing powers should be conferred on the Commission.~~

~~(94)~~ [*continue as 93*] The~~A~~ Battery Passport should ~~be established,~~ allow~~ing~~ 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. In order to ensure uniform conditions for the implementation of the battery passport, implementing powers should be conferred on the Commission.

[new recital 94]

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 ecodesign for sustainable products. Technical specifications 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.

Annex A: Definitions of SME or similar

- Definition of SME in Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises:

The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

- Definition of SME in Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings:

consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, do not exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking:

(a) balance sheet total: EUR 20 000 000;

(b) net turnover: EUR 40 000 000;

(c) average number of employees during the financial year: 250.

- The proposal for a Directive on corporate sustainability due diligence defines SMEs as:

a micro, small or a medium-sized enterprise, irrespective of its legal form, that is not part of a large group, as those terms are defined in Article 3(1), (2), (3) and (7) of Directive 2013/34/EU

and also defines subsidiary:

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 is exercised;

However, for its scope of the high-impact sectors (such as mining), it uses these criteria:

For companies formed in accordance with the legislation of a Member State: *more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared, provided that at least 50% of this net turnover was generated in one or more of the following [high-impact] sectors: [..]*

For companies formed in accordance with the legislation of a third country: *a net turnover of more than EUR 40 million but not more than EUR 150 million in the Union in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the [high-impact] sectors [..].*