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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
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Subject:	End-of-Life Vehicles Regulation: Follow-up to the WPE on 2 December 2024 – comments from a delegation

Following the call for comments on the above set out with WK 15288/2024, delegations will find attached comments received from the LU delegation.

LUXEMBOURG COMMENTS on the Proposal for a Regulation of the European Parliament and of the Council on circularity requirements for vehicle design and on management of end-of-life vehicles

Comments on Steering Note WK 14983/2024 PRESIDENCY COMPROMISE

Introduction and Recitals

Introduction, reference to Article 192(1) of TFEU: LU fully supports this addition.

Recital 35: As the purpose is to help producers, LU suggests adding the following at the end: "*and, if available, to the national webpages displaying the registration procedure*". It seems important to us that producers get all information on how to register.

Recital 38, "fair allocation of costs": LU thinks this is not realistic, and it might not be necessary, or should be adapted, if article 22 is modified in the way we suggest (cf. comments further down). We also wonder whether "fair allocation" would not require further definition.

Recital 40:

- LU suggest deleting the words "*in particular*" to clarify that this guarantee can only serve in these cases. Otherwise, it is too complicated if this guarantee has more than one functionality (see also comments on article 20(4))
- to be coherent with the system of cross border mechanism that we propose later in this paper for article 22, we recommend to insert the following addition at the end of the sentence: "*or in the event the vehicle which they made it available for the first time is deregistered from the Member State, and is registered in another Member State where it has to benefit from the cross border mechanism mentioned in article 22.*"

CHAPTER I

Article 2 para 3(k): LU wonders how the EPR system for categories M2, M3, N2, N3 and O can work without cross-border mechanism. Will MS be allowed to put a system in place to address this?

Article 3

para 1 :

- **point 2:** to align better with the changes, LU suggests the following precision in the definition:

" 'end-of-life vehicle' means a vehicle which is waste as defined in Article 3, point (1), of Directive 2008/98/EC, or which must be considered as waste according to the assessment mentioned in article 37;"

- New point (41) (to support our comment in Annex I part B) : **'abandoned vehicle' : a vehicle found in a public place without number plate and without any indication on the identity of the vehicle owner, which shows no indication of having been stolen or illegally used, and, for which a visible display on the vehicle stating that it shall be removed by a competent authority after a period of one month was followed by no effect;**

CHAPTER IV Section 1

Article 15 new para 5: scrutiny reserve. We don't think it is appropriate to interfere. For LU, the aim is to have a contract between a producer/PRO and an ATF, to guarantee and prove that the ELVs will have an authorised treatment plant.

CHAPTER IV Section 2

Article 16 :

- LU thinks it is important to have a clear provision on the possibility for a producer to appoint an authorised representative. Therefore, we suggest putting a (1) at the beginning of the article, and to add a second paragraph:

"(2) When the producer makes a vehicle available on the market for the first time in a Member State which is different from the Member State or the country outside the EU where he is established, he shall appoint an authorised representative to fulfil his obligations under this Chapter.

Member States may adopt measures to allow Producer Responsibility Organisations to assume the role of the authorised representative for the producers it represents."

It would also be important to harmonise the wording of all the articles: when a provision can apply to an authorised representative of the producer who has appointed one, this authorised representative should always be clearly mentioned as an actor among the others: producer and PRO. It is not always the case, thus leading to confusion.

- **point (a)** : the word "are" is missing at the end

Article 17 (ex 18)

- **para 1:** LU strongly supports the addition.
- **para 4:** As reference is made on the article 8a(6) of the WFD and in order to take account the reasoning of this article, LU suggests to add the words ", including the competent authority designated pursuant to article 14," between the words "stakeholders" and "according"

Article 18 para 1: LU suggests adding "or its authorised representative," after "A producer, in the case of individual fulfilment of extended producer responsibility obligations, ".

Article 19 (ex 17):

- LU suggests adding the following at the end: "*and, if available, to the national webpages displaying the registration procedure*". It seems important to us that producers get all information on how to register.
- Article 19 (ex 17), para. 1 last sub-paragraph: change "*amending directive*" to "*regulation*"

Article 20

para 1

- **first sub-paragraph:** Does this article apply only to producers paying a contribution to a PRO, or also to individual producers (and their financial obligations) by? If the individuals are also covered – which we find justified and necessary -, the wording of "*contribution*" should be replaced with "*participation*".
- **first sub-paragraph:** according to the definition, "*making available on the market*", means every time that a vehicle is put on any market in the EU, not only the first time. This provision may therefore imply double or multiple payments for producer for the same vehicle. This should therefore be replaced by "*makes available for the first time on the market of a member state*"., If the payment is due at each registration, a reimbursement system of the first producer making available on the market should be set for the cases when a vehicle leaves a MS, or even if a vehicle is made available on the market again in the same MS.
- **point a:** LU is in favour of the addition regarding orphan vehicles but thinks this should also apply to the treatment. Therefore, LU would like to add "*these*" between the words "*the costs of the treatment of*" and "*end-of-life vehicles that is necessary*". Moreover, to ensure that also individual producers participate in these costs, LU suggests adding a second sentence to point a: "*The contributions to cover the collection and treatment of end-of-life vehicles for which the producer cannot be identified or ceased to exist take the form of a deposit in a common fund. These deposits are not reimbursable.*"

para 3:

- "*making available on the market*" should be replaced by "*making available for the first time on the market of a member state*".
- LU is of the opinion that their contribution/participation should include the whole treatment, not only depollution. We therefore ask to replace "*depollution*" by "*treatment*".

para 4 first sub-paragraph: For LU it is unclear in which cases this guarantee will be used: permanent cessation of the producer's activity, insolvency or withdrawal from the authorisation, as stated in recital 40, or for any operations undergone in the frame of cross-border interactions, as it is our understanding of article 22? We think this guarantee should cover the cases mentioned in recital 40 exclusively. We also think PROs should also provide such a guarantee.

Therefore, we would replace this first sub-paragraph by the similar one from the Batteries regulation:

"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 the event of non-compliance with the extended producer responsibility obligations, including in the event of permanent cessation of their operations or insolvency. Member States may specify additional requirements concerning such guarantee."

Proposal for New para 6: To make provisions of article 22 -as we propose it- work, the case of a vehicle being registered in a MS without any producer should be taken into account. Therefore, LU suggests adding a new paragraph:

"6. In the case of a vehicle being registered in a MS without having been made available on the market of this Member State by a producer, Member States should have the possibility to require the registering person to pay an EPR contribution.

In the case where this vehicle is sold on a consumer-to-consumer basis, without a producer, the buyer should be required to pay the contribution to the registration authority, which should also reimburse the seller from his contribution."

Article 22: LU would be in favour of option of point 6 from the Non-paper of the COM. LU considers that the reimbursement system needs to be further structured to avoid double counting.

Article 23: the authorised representatives should also be mentioned in every paragraph of this article.

para 1:

- the wording "*, or participate in the setting up of,*" should be deleted because it is not compatible with the 2d sub-paragraph of this para, which only mentions "*set up collection systems*". Recital 44 should also be amended in this way.
- Typo: include "*vehicles*" between "*for all*" and "*that they have made*"

Para 2.b : to ensure that only legal professionals from repair and maintenance benefit from this measure, LU suggests to add "*professional*" between "*from*" and "*repairs*"

Article 24 para 2 last sub-paragraph: LU suggests adding a new sentence after, to precise who has to verify this proof.

"This documentation is verified by the authorised treatment facility or the collection point, which should be allowed to have the support of the competent authority responsible for batteries EPR pursuant to article 54 of the Regulation 2023/1542, if he has any doubt on the legacy of this proof."

Or as an alternative: *"The authorised treatment facility or the collection point is allowed to refuse the end-of-life vehicle free of charge if there is no proof or if the proof is not satisfactory."*

Article 25 para 3: In order to be able to fulfil the provision of para 4, para 3 needs to be completed at the end of the sentence: *"and shall transmit a copy of the certificate to these authorities."*

Article 27, para 2.e : there are minor corrections : *"ensure that all treatment of end-of-life vehicles referred to in this paragraph..."*

Article 29

para 2: to avoid mixing the different type of oils of vehicle which hinder a reuse or recycling process, LU suggests adding a sentence: *"If necessary in order to enable their reuse or recycling, waste oils of different characteristics shall be collected, stored and treated separately in accordance with Article 21 of this directive."* This could also be laid down in recital 53.

Para 5: LU would like to have the confirmation whether this implies that these depolluted parts, components and materials are still considered as hazardous waste? We can totally agree with it, but we think it would be appropriate to include this in recital 53 so that there is a common understanding on this. Example: *"The parts, components and materials that have been depolluted according to this Regulation should still be considered as hazardous wastes, given their hazardous character."*

Para 6: It would be most efficient if this information was given to producers / PROs to feed their own reporting. To make it easier for all authorised treatment facilities, LU suggests adding at the end of the sentence: *"If the Member State makes use of its right laid down in article 49 paragraph 7, the facility reports these informations to the producers and PROs that have contracted with him, instead of reporting to the competent authority"*.

Article 30 para 1: As recycling is not the only type of possible treatment according to annex VII Part F (example: Removed electronic components and parts point 4), LU suggests replacing *"recycling"* by *"treatment"*.

Article31

para 1: in order to assure compliance with the waste hierarchy, LU suggests the following adding between the words "assess" and "all parts": ", in respect of the waste hierarchy as set out in Article 4 of Directive 2008/98/EC,"

Para 2 point c: we are not sure to whom this copy must be provided (except in the case of the request from an authority according to para 4), but it should be clarified.

Article 32

Para 3: to stay in line with similar provisions, LU suggests replacing "online platforms" by "distance contracts as defined in Article 2, point (7), of Directive 2011/83/EU".

Article 34:

- as explained beforehand, LU is not in favour of mixing reuse and recycling / recovery in the targets. But in a view of compromise, we could support this para 1 if it is clearly mentioned that the parts and components taken out and reused accordingly to articles 32 and 33 can be counted in these targets. We suggest incorporating following sentence to para 1: "*The parts and components taken out for reuse, remanufacturing or refurbishment according to articles 30 to 32 and used again according to article 33 are counted in the share of reuse of the targets set out in this paragraph.*"
- **Para 2:** for more clarity, LU would insert ", measured the same year," between "weight of plastics" and "referred to".

Article 37

para 1 2d sub-paragraph: If the vehicle has to be roadworthy, then it should not be a problem to supply the roadworthiness certificate to the buyer, even if the seller is not an economic actor. This sub-paragraph should therefore be deleted.

Para 4 :

- according to the definition of waste, in the WFD the decision of declaring a product as waste only belongs to its producer/owner. Therefore, the provision: "*the insurance company shall also assess whether the vehicle must be considered as an end-of-life vehicle or not according to Annex I*", should be nuanced as follows:
- under point a : to be coherent, LU asks to 1) replace the word "are" by "*the insurance consider that they must be*" or 2) to delete the words ", including a specification of those which are considered end-of-life vehicles in accordance with Annex I; "

Article 38 para 4 : to strengthen the control on export, LU suggests to require directly the roadworthiness certificate instead of a statement. Another point is that between the moment where the roadworthiness certificate was issued and the moment of request for export of the vehicle, this vehicle may have been damaged or have become environmentally less safe (leakage of fluids...). This would help the implementation of article 40 para 1.

Therefore, LU suggests modifying point b and add a new point (c), as follows:

"(b) a statement confirming that the used vehicle is not an end-of-life vehicle and is not presenting any damage or leakage likely to cause environmental damage;

(c) a copy of the roadworthiness certificate."

To be coherent with this proposed change, we wonder if the provision in article 39 para 1 should be modified or not in order to minor administrative burden for customs authorities.

Article 42 para 3: to avoid any ambiguity, LU proposes to add the words "*as a non end-of-life vehicle*" between the words "*exported*" and "*to*"

Article 45a

para 1 (or 13? may be a typo) : following to the discussions on the subject during a TAIEX workshop in October, and the assessment that in the DSA online platforms only have to "make best efforts to assess whether the information [...] is reliable and complete", LU suggests to delete the reference to the DSA and its article 30. This will make this provision, which we fully support, mandatory for all providers and all producers. CLS could provide information on the fact whether this is compatible with the DSA or not, as this regulation is a *lex specialis*.

So we ask to delete "*For the purpose of compliance with Article 30, paragraph 1, points (d) and (e) of Regulation (EU) 2022/2065,* "

Point b : LU suggests to replace "Article 16" with "Chapter IV", in order to clarify that also specific provisions such as the cross border mechanism must be complied with.

Article 47 para 1: if our understanding is correct, the registration mentioned here is the registration pursuant to the regulation 2018/858, and not pursuant to article 19 (old 17) of this proposal (EPR registration) ? This should be clearly specified, also in para 2.

Article 49

para 1: as article 16 only applies from 36 months after the entry into force of the regulation, it is not possible neither coherent to require a reporting at the same time. The time for data preparation, for producers and then for MS (= 18 months as written in para 1), must also be taken into account.

new paragraph 7: to be coherent with our proposal in article 29, LU proposes a new paragraph 7 :
"Member States may require the waste management operators and other relevant economic operators to provide these informations to the producers and PROs that they have contracted with, instead of reporting to the competent authority."

Article 52 : typo : should be 2023/1542

Article 53 para 2 point 2 : LU suggest to have a definition that is coherent with the Battery regulation, where LMT is indirectly defined under the definition 11 "*'light means of transport battery' or 'LMT battery' means a battery that is sealed, weighs 25 kg or less and is specifically designed to provide electric power for the traction of wheeled vehicles that can be powered by an electric motor alone or by a combination of motor and human power, including type-approved vehicles of category L within the meaning of Regulation (EU) No 168/2013 of the European Parliament and of the Council (43), and that is not an electric vehicle battery; "*

Notably the word "*light*" used before "*wheeled vehicle*" in article 53 is a difference, as well as the listing of electric scooters and electric bicycles which are not mentioned in battery regulation.

Article 56 para 1 point b : LU would prefer to mirror the whole articles 5 and 6 of directive 2000/53 included, not only those specific paragraphs. This is important to ensure that producers continue to endorse their responsibility for collection and treatment until this regulation applies, otherwise there would be periods without any responsible producer. LU suggests replacing "*Article 5(4), second subparagraph, Article 6(3), second sub-paragraph "* by "*Article 5, Article 6*"

Annexes

Annex I

Part A :

- **point 1.b:** This can be fixed, it should therefore be deleted.
- **point 1.f:** the words "*multiple breaks in primers,*" should be deleted, because a car body with breaks does not hinder the vehicle from driving safely and the term "*multiple*" is too vague.
- **Point i :** as the parts A and B from annex I are part of the assessment to be done by the independent expert, it is not logical to have this point written in this annex as "*a criteria of itself*", being a vicious circle

Part B

- **point b :** LU welcomes the addition, but encourages to add a definition of "abandoned". A possible formulation could read as follows : "*'abandoned vehicle' : a vehicle found in a public*

place without number plate and without any indication on the identity of the vehicle owner, which shows no indication of having been stolen or illegally used, and, for which a visible display on the vehicle stating that it shall be removed by a competent authority after a period of one month was followed by no effect; "

- **Point d** : LU wonders which cases are meant by this point, and thinks this point should be deleted
- **Point e** : LU reiterates the position that economic loss is not a criteria for considering a vehicle as an ELV, as it goes against the definition of waste in Directive 2008/98/EU. This position is also supported by para 2 of article 37, which sets the conditions in which the ownership of a vehicle with economical loss can still be transferred. This point must be review.
- **Point f** : this point should be deleted as the same reasoning applies than for point e : according to Directive 2008/98/EU it is up to the vehicle owner to decide whether his vehicle becomes an ELV or not,
- **Point h** : This can be fixed, it should therefore be deleted
- **Point k** : LU asks for adding "or soil" between "water" and "pollution"
- **Point l** : LU asks for adding "and cannot be replaced" after the word "worn"
- **Point m** : This can be fixed, it should therefore be deleted

Part D para 3 : LU suggests to delete the words "*declare that vehicle as an end-of-life vehicle and*", because we do not see any legal basis for this. Moreover, the waste definition provides sufficient elements to leave it only to the MS requesting the vehicle owner to deliver it to an ATF, because of the words "*which the holder [...] is required to discard*" in the waste definition.

Annex II

part A: LU asks to delete "*with one decimal place*" as this is unnecessary burden, especially for weight already expressed in kg

Annex VII

Part A

Point 1

- **a** : about the decanter and cleanser-degreaser, LU finds it important to add "*sized to the maximum*"
- **b** : on the words "*including rainwater*" it is important to precise and add the following : "*including rainwater in a pipe that is separated from the wastewater drainage*"

- **New (e)** : *"use as far as possible only dry cleaning methods of the soils;"* This prevents from polluting with pollutant fluids, which cannot be totally caught in a cleanser-degreaser.
- **New (f)** : *"have the collection facilities, decanters and cleanser-degreasers cleaned by a specialised operator in an appropriate manner, including possible hazardous waste management, on a regular and frequent basis and at least once in a year. Documentation proving the cleaning was effectively done must be kept at least 3 years."*

Point 3 :

- For the whole point 3, see all the suggestions we made for point 1
- **Point (f)** : LU suggests to add either *" , water accumulation"* after *"hazards"*, or *"including covering, "*after *"tyres"*. This is to help preventing the public health problem of mosquito development in the water retained by tyres.

Part B

point 1: LU would like to include *"on appropriately sized spill pallets"* after *"location"*.

Point 2

- **(b):** LU suggests adding the words *"handled and"* before treated, so to include sound collection.
- **d:** LU would like to include *"on appropriately sized spill pallets"* after *"location"*.

Point 3

- **c:** LU would like to have further clarification if the total quantity is for the total number of ELVs in one year? We also advice to precise the units unless a secondary legislation (act) is going to precise it, otherwise this data -which collection represent is a burden for the ATFs- will not be able to be exploited.
- **d:** is it the transporter from the collection point to the authorised treatment facility, or the transporter from the outgoing waste streams of the depollution process? And does it apply to the whole ELV before depollution, or to the various waste outgoing from depollution?

Part C

point 1.a: Typo, it should be (1.4) and not (141)

point 1.b: Typo, it should be (1.1) and not (11)

Part D:

LU thinks that every point in (a) and (b) are important, therefore proposes to merge both. We also propose to include depollution.

"1. Technical evaluation of the removed parts and components for reuse, remanufacturing or refurbishment:

(i) the part or component is depolluted, complete and functional;

(ii) in the case of reuse: it is fit to be used, in a readily manner, for its primary purpose it was conceived for;

(iii) an assessment of damage, reduced functionality or performance and repairs needed for restoring the part or component to a state where it is fit to be used;

(iv) there is no heavy corrosion."

Part G

point 1.

- **a** : the words "treated *selectively*" are ambiguous, we suggest to replace them by "*removed and treated separately*"
- **c** : LU asks for clarification and better wording, as we don't understand what is required and where the notion of packaging appears in ELVs
- **d**: LU thinks the reference to "*waste streams*" is vague and insufficient and proposes to replace it with "*outcoming waste streams and end-of-waste material streams*".
- **(e)** :
 - as there is an obligation of separate collection in order to enter separate treatment streams, and this obligation is repeated in points 1.a and 1.b, LU does not see how the waste streams coming out from shredding could satisfy the provision of and by counted into the targets of both the batteries regulation and WEEE directive. We ask to delete this point.
 - it should be precised that it is in weight (if this is correct, or else in percentage of weight). To specify the unit, LU suggests adding "*by weight*" between "*contribution*" and "*of the mixed waste streams*".

Point 2.c: Unless we misunderstand the word "*organic*", it should be deleted as nothing organic should enter those waste streams. This is also valuable for point **2.d**.

Point 3.

- **b** : LU would like explanations on what is meant with "*ready for recycling for a representative treatment configuration*"
- **c** : To avoid situations where an ATF simply has no removal at all and tries to justify it, we suggest to add at the end of the sentence "*or, in the absence of separate removal, compared to the quality and quantity of components and parts that could have been expected from such a prior-shredding removal*"

Annex VIII : to take into account point 3 of that annex, the title should be completed into "*INFORMATION FOR AUTHORISATION AND REGISTRATION IN THE REGISTER OF PRODUCERS*"

Annex IX :

- how will the operator issuing the CoD know which number to put there? Would it be necessary to foresee a European system to attribute a number or follow a national logic?
- We wonder what is meant by "*Nationality mark*", is it clear for ATFs?
- LU thinks it is important to have an official number communicated for every operator issuing a CoD, so we ask to add "*and replaced by the European or national tax identification number*" after "*waived*".