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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: WPE on 28 November 2022: Presidency steering note

With a view to the meeting of the Working Party on Environment of 28 November 2022, delegations will find attached a steering note by the Presidency.

Please note that due to technical problems, the annex with the latest version of the 4-column table on the Batteries Regulation will be distributed by email.

Proposal for a Batteries Regulation – WPE 28 November 2022

Steering note

Preparation for a political trilogue

In the light of the forthcoming 4th political trilogue planned for 9 December 2022, the Presidency would like to prepare with the WPE a new mandate for the proposal for a Batteries Regulation, which will be discussed at the COREPER in the first week of December. The scope of the revised mandate will cover the entire Batteries Regulation proposal with the view to possibly close the negotiations. In the annexed four-column table a complete overview of the state of the negotiations and proposals for revised mandate are provided. For some articles where the discussion is still ongoing or where the Presidency awaits feedback from the EP on compromise proposals, the text in the four-column table differs from the text in this cover note, the proposals for revision of these parts of the four-column table are provided only in the cover note. This concerns in particular articles related to online marketplaces, Article 55, Chapter VIII and related Annex XIII. To guide the discussion at the WPE the Presidency proposes to focus primarily on the points presented in this cover note.

Results of the WPE discussion will guide the Presidency in identifying the possible landing zones for the negotiations with the EP. While some of the issues might still be resolved at the technical level, a number of them will have to be addressed at the political trilogue. Note that for some of the rows marked as red or yellow in the four-column table the Presidency has already received flexibilities from the delegations to be used later in the negotiation process to strike a deal.

Horizontal issues

Two deadlines for start of application, r. 231a, 231b, 231c, 231d, 238a, 238b, 238c, 238d, 243a, 243b, 243c, 243d, 247, 269a, 284, 285, 285b¹

Two deadlines for start of application of certain requirements were set, linking the first deadline to the entry into force of the Regulation and the second to the entry into force of a delegated or implementing act. This was suggested as a safeguard in case the EC would not be in a position to deliver a delegated or implementing act within a given deadline, subsequently leading to difficulties with implementation on the ground.

The EP is not comfortable with two different deadlines, in particular with one of them being linked to a secondary legal act. The EP argues this could create legal uncertainty.

¹ Listed here as marked in yellow in the TTE: 231a-243 – Art 7, 247 – Art 8, 269a – Art. 10, 284- 285b – art. 13, 818 – Art. 70

Not listed as marked in green in the TTE, with the same issue though: 261 – Art 9, 269 – Art 10

Note that a new text in 818 art. 70 no longer refers to two deadlines, it uses as a reference point entry into force of a delegated act.

While the Presidency is ready to defend the GA position, as a fallback option for negotiations, it would like to know Member States' flexibilities to agree to apply by principle only one deadline for start of application of different requirements.

Chapter I

Article 4 on sustainability, safety, labelling and information requirement for batteries, r. 201+

The EP extends the scope of Article 4 on sustainability, safety, labelling and information requirement for batteries by adding 'due diligence'. This turns the due diligence into a product requirement, and thus also a conditionality for access to the EU market. As due diligence is basically about having certain processes in place, making it a market conditionality might be difficult to justify in the context of the WTO rules. Hence the Presidency suggests to keep the scope of Article 4 (and any other related provisions) as in the General Approach.

The Presidency would like to know whether Member States agree to keep the scope of Article 4 (and any other related provisions) as in the General Approach.

Chapter II

Article 8(1), r. 247

In compliance with the agreement made during the 2nd political trilogue on 30 June, Article 8(3) was updated to extend the scope of the targets for recycled content of batteries also to LMTs as of 2035. The EP implies that agreement to cover the LMT batteries in Article 8(3) also means that the LMT batteries should also be included in Article 8(1), which requires that the batteries will be accompanied by documentation containing information about the share of recycled content already in 2027.

The EC indicated that, for educational purposes, it might be useful to include the obligation to have a documentation containing information about the recycled content in batteries ahead of the date when the targets start applying.

The Presidency understands this reasoning, yet the political agreement reached covered only inclusion of targets for LMT batteries from 2035. For the other batteries the obligatory documentation of recycled content starts only 3 years ahead of the application of targets. Therefore, as a fall-back option, the Presidency suggests to apply the same logic for the LMT batteries.

Depending on the deadline, the amendment to article 8(1) would read as follows:

Article 8(1) - Recycled content in industrial batteries, electric vehicle batteries, light means of transport 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 ~~second~~ **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, 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 batch 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 [156/120 months] after entry into force of the Regulation.

*By 36 months after entry into force of the Regulation, the Commission shall adopt an implementing act laying down a delegated act in accordance with Article 73 to supplement this Regulation by establishing the methodology for the calculation and verification of the amount share of cobalt, lead, 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 battery, in the batteries referred to in the first **and second** subparagraphs, and the format for the technical documentation. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).*

The Presidency would like to know whether Member States could agree to include an obligation for LMT batteries to be accompanied by documentation containing information about recycled content three years ahead of the application of the targets as reflected in Article 8(1), 2nd sub-paragraph.

Article 11 - Removability and replaceability of portable batteries and LMT batteries, r. 272+

Wording of Article 11 was discussed at the WPE on 15 September 2022, WK 11838/2022. The principle that batteries should be removable and replaceable by the end-user was agreed already during the 2nd political trilogue on 30 June 2022. The Presidency was tasked with defining exemptions from this rule. The Presidency considers this article very sensitive, being aware of its implications for products design. During technical negotiations a possible compromise was agreed after a number of lengthy and difficult exchanges. To ensure that the producers get sufficient time to accommodate requirements of this article, the Presidency proposed to

postpone application of the article from the initially proposed 24 months to 48 months. The EP wants to shorten this period to 36 months.

Article 11 – Removability and replaceability of portable batteries and LMT batteries

*1. From **[24/36/48 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, proprietary tools, thermal energy, or solvents to disassemble.

Any legal or natural 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, including consumers.

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/EU¹.

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 operators:

- 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) 2017/745², and in-vitro diagnostic medical devices, as defined in Article 2(2) of Regulation [of the European Parliament and of the Council] (EU) 2017/746³.*

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.

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.



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In cases where portable batteries incorporated into products are not made removable and replaceable through the application of paragraphs 2 or 3, the labels and QR code referred to in paragraphs 1, 2, 3 and 5 of Article 13 shall be printed or engraved visibly, legibly and indelibly on the products from the dates of application indicated in that Article.

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 **[24/36/48 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 operator 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 operators 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.

1. 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. 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. 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.



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The Presidency would like to know whether Member States could be flexible to shorten the date of application to 36 months.

Chapter III

Article 13(1), Article 13(2), Article 13(2a) on entry into application of the Article , r. 284, 285, 285b

On top of what is discussed under ‘horizontal issues’, the EP pushes for shortening the deadline for application of Article 13 from 48 months to 36 months.

Article 13(1)

From either [36/48 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 laid down in Part A of Annex VI.

Article 13(2)

From either [36/48 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.

Article 13(2a)

From either [36/48 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’.

The Presidency would like to know whether Member States could be flexible to shorten the date of application to 36 months.

Article 13(7) on implementing act for harmonised labelling requirements, r. 304

While the overall timetable for application of individual requirements has to be seen as a package, and application of Article 13 is one of those mentioned above under ‘horizontal issues’, the proposed compromise timing of 36 months after the entry into force corresponds to the initial Council’s ambition from the general approach, which advanced the application by a year against the EC proposal. This however, has implications for Article 13(7). If the EC adopted the implementing act establishing harmonised specifications for the labelling requirements only 30 months after the entry into force of the Regulation, the market would get only 6 months to adapt to the change. Therefore, the Presidency is proposing to shorten the EC’s deadline to 24 months, so that the market gets a year to adjust to the new requirements.

Note also that the EP suggested to add an additional labelling requirement for portable batteries of general use. The Presidency is ready to accept this amendment as a bargaining tool.

Article 13(7)

*The Commission shall, by [30/24 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. **[For portable batteries of general use, such labelling shall include an easily recognisable classification of their performance and durability.]** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 74(3).*

The Presidency would like to know whether Member States could be flexible to accept the proposed shorter deadline for the implementing act.

Chapter IV

(new) Article 15(1a) on harmonised standards, a new row to be added between r. 316-317

The EP’s amendment in point 1 of Annex III on Electrochemical performance and durability parameters for portable batteries of general use (r. 964) replaces ‘specific set of conditions’ by ‘real-life conditions’. The idea is to avoid a ‘diesel gate’ situation when testing batteries. As the EC explained that standardisation applies to testing conditions and ‘real-life’ conditions actually vary rather significantly depending on many factors, including geographical location, the Presidency suggests keeping the original phrasing of the annex and addressing this rather important aspect by a new paragraph. The article would read as follows.

Article 15(1a)

Harmonised standards shall aim to simulate real-life usage as far as possible while maintaining standard tests.

The Presidency would like to know whether member states could agree to this proposal.

Article 17(3) on conformity assessment, r. 327 and 328

When discussing this Article the EP insisted on adding requirements also according to Article 39 (due diligence) for conformity assessment procedure on batteries, and to require a conformity assessment in accordance with Modules D1 or G for Articles 10 and 12, instead of allowing these requirements to be assessed under Module A (Internal production control). The Presidency intends to keep its positions as regards non-inclusion of Article 39 for conformity assessment, but it would like to know whether the flexibility could be possibly shown as regards moving articles 10 and 12 from row 327 to row 328.

The Presidency would like to know whether Member States could show flexibility on including references to Article 10 and 12 for conformity assessment procedure of batteries in Article 17(3) instead of Article 17(2).

Chapter V

Article 23(5) on notifying authorities, r. 356

The EP proposes an amendment to this paragraph providing that the notifying authorities should have “sufficient funding” in order to be able to properly perform its tasks. The EP argues that in some Member States notifying authorities are not a public sector, and hence for these Member States it might be a useful reference to have.

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.

The Presidency would like to know whether Member States could agree to the proposed amendment of the text.

Chapter VIa

Article 39(1) / Article 45a on due diligence - exemptions for SMEs, r. 455 / 536d

During the political trilogue on 11 October 2022, a landing zone for the scope of the due diligence provisions was identified. The due diligence would cover all batteries, while exemptions would be granted to SMEs. The Presidency proposal for the SMEs exemptions was discussed with delegations during the VTC WPE on 25 October 2022, WK 13744/2022. The EP, without being ready to discuss the proposed phrasing at the technical level, indicated that it would like to go beyond what was proposed and introduce stricter requirements when the sourcing comes from high-risk areas. While the Presidency does not know what exact text the EP would like to suggest, to understand the scope for manoeuvre for negotiations, it would need to understand if Member States could be flexible to consider some modifications of the SMEs exemption addressing cases when the material comes from high-risk areas.

The Presidency would like to know whether Member States could consider some modifications of the SMEs exemption addressing cases when the material comes from high-risk areas.

Article 45a(5) on technical assistance, r. 536i

The EP's amendment on assistance of Member States to economic operators in fulfilling obligation linked to due diligence was discussed with the WPE already at the WPE meetings on 26 July 2022 (WK 10659/2022) and 15 September 2022 (WK 11838/2022), following the alignment of the proposal with the Corporate Sustainability Due Diligence proposal. The delegations showed flexibility to accept the text if 'shall' is modified to 'may'. Given the importance the EP puts on this requirements, the Presidency would like to know if the delegations could show flexibility to accept 'shall' so that it could be used in negotiations to trade off for some other concessions from the EP.

Article 45a(5)

*Member States **[may/shall]**, 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. [Specific consideration shall be given to SMEs.]²*

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.

² The specific considerations to SMEs are in brackets as in principle the SMEs should be excluded from the application of Chapter VIa, pending a political agreement.

The Presidency would like to know whether Member States could consider using ‘shall’ in Article 45a(5).

Chapter VII

Article 5(1)a / Article 45g(2) on single contact point, r. 207a / 537c

The EP proposed an obligation for Member States to designate one contact point among competent authorities for the purpose of communication with the EC. While the Presidency considers this to be a disproportional requirement, which disregards national structures in place, for a possible trade off with the EP as also discussed during the WPE meeting on 14 June 2022, it would want to know Member States’ flexibilities to accept the EP’s amendment as it stands and/or by replacing ‘shall’ by ‘may’.

Article 5(1)a / Article 45g(2)

Each Member State [shall/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.

The Presidency would like to know whether Member States could be flexible to accept the EP’s amendment requiring establishment of one contact point and/or its modified version replacing ‘shall’ by ‘may’.

Article 48(8) and Article 48a(8) on EC empowerment to amend methodology, r. 623a, 624s

The EP showed flexibility to accept the Council’s phrasing of Article 48(8) and 48a(8), however, it would prefer a shorter timetable for its application than the proposed 48 months after the entry into force of the Regulation. However, note that the EC showed hesitation as regards feasibility of advancing the delegated act, given that it is linked to the development of the market and increased lifetime of the rechargeable portable batteries.

Article 48(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 **[36/48 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(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 **[36/48 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.*

The Presidency would like to know whether Member States could be flexible to accept, in both articles, shortening the deadline to 36 months after entry into force of the Regulation.

Article 55 on collection rates for waste portable batteries and waste LMT batteries, r. 654+

Structural changes to article 55 were discussed with the WPE on 15 September 2022, WK 11838/2022. The new structure was discussed also with the EP during technical meetings. The EP was not able to accept the new wording of Article 55 proposed by the Council and proposed a revised draft of this Article:

Article 55

*1. Member State shall **adopt all 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.***

*2. In order to comply with the obligations under paragraph 1, Member States shall **continuously 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. The producer or producer responsibility organisation shall present a draft corrective action plan to the [Member States/competent authority] **within three months of the request by the [Member State/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 [Member States/competent authority] makes its observation known, the producer or the producer responsibility organisations shall draw up the corrective action plan, ~~taking into account~~ **in accordance with such observation within one month of the reception of the observations by the [Member State/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 **[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).

The Presidency would like to know whether Member States could be flexible to accept the text of Article 55 with amendments as proposed by the EP.

Article 57(4) on empowerment to the EC to establish rules on the calculation and verification of recycling efficiencies and recovery of materials, r. 671

During the WPE meeting on 7 November 2022 (WK 14843/2022), the Presidency tested with delegations a possible two step approach to establishing rules on the calculation and verification of recycling efficiencies and recovery of materials. During the meeting the EC explained the constraints this would put both on its resources, and on the actual implementation. The largest constraint is the time and resources required for preparation of two rather than only one act. The time delay would not leave enough transition time for the market to accommodate the requirements.

For the EP, changing from the implementing act to a delegated act is a political point. The EP believes that substance of the act will supplement the Regulation on important issues and they feel they should be included in the procedure to set these rules. The EC has a preference for an implementing act, but is open to the delegated act.

Note that wording of the article would then have to change, as the current wording implies an implementing act. The text could read as follows, prepared by analogy to the agreed delegated act for Article 8(1) in r. 248.

Article 57(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.

4a The Commission shall, by 18 months after entry into force of the Regulation, adopt an implementing act for the format for the technical documentation needed for the methodology referred to in paragraph 4. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 74(3).

The Presidency would like to know whether Member States could be flexible to accept a delegated act for establishing rules on the calculation and verification of recycling efficiencies and recovery of materials in Article 57(4) as well as new proposal for an implementing act in new paragraph 4a.

Article 57(5) on empowerment to the EC to amend the minimum efficiency and materials recovery targets, r. 672

Article 57(5) will be included in the overall discussion on the timing and targets. The EP's amendments change rather significantly the original EC's proposal, requesting by 2027 an evaluation report on the progress made on the subject in the light of scientific progress and emerging technologies and, if appropriate, to provide a legislative proposal to increase the minimum recycling efficiencies and levels of recovered material. The EC argues that a legislative proposal in 2027 is not feasible. The EP might be open to accepting a delegated act to amend the minimum targets as suggested by the Council, however, only if the timing would get advanced (in particular if the final agreement on targets is not too ambitious).

The Presidency sees two possible options, which are not mutually exclusive, how to address this topic in the negotiations as indicated in the box below.

The Presidency would like to know whether Member States could agree to:

- I) A delegated act to amend the minimum targets in 2027.**
- II) Adding the requirement to amend the minimum targets to the general review clause.**

Chapter IX

Article 68a on Union testing facility, r. 799a+

In WK 15079/2022 the Presidency tested Member States' flexibility to accept EP's proposal on inclusion of Article 68a on Union testing facility. The Presidency would like to propose an alternative phrasing to the article to have different options ready for negotiations with the Parliament.

Article 68a(1)

The Commission shall [consider including / include] batteries as covered by this Regulation in its calls 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.]

The Presidency would like to know whether Member States could agree to the alternative phrasing to Article 68a(1).

Chapter X

Article 70 on green public procurement, r. 816+

While Article 70(1) has been preliminary agreed as in the general approach, some modifications have been suggested to paragraphs 2 and 3 of Article 70. In paragraph 3, the timeline has been clarified to reflect timing of the different delegated acts that will be prepared by the EC. Note that the months indicated in brackets provide an idea of the timeline for the adoption of the first delegated act through this empowerment and will be removed in the final text. The overall timetable stays the same as in the general approach.

The original wording of the general approach in paragraph 2 was phrased in the same way as discussed under ‘horizontal issues’. The revised phrasing is thus addressing the EP’s concern and introduces only one date for the start of application of the article. The date is bound to the adoption of the latest delegated act as in paragraph 3. The EP would prefer to shorten the deadline for application, going down from the 72 months (corresponds to 12 months after entry into force of delegated acts) proposed in the general approach to 66 months (corresponding to 6 months after entry into force of delegated acts). This would give to contracting authorities only 6 instead of 12 months to prepare for the application of the new procurement rules.

Article 70(2)

From [6/12 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 award criteria based on Articles 7 to 10 to ensure that batteries or products are chosen with significantly lower environmental impacts over their lifecycle.

Article 70(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) [18m and 36m], Article 8(1) [36m], Article 9(2) [48m] and Article 10(3) [30m], 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.***

The Presidency would like to know whether Member States could be flexible to accept a shorter deadline for application of Article 70.

Chapter XIII

Article 79(2) on application of certain provisions, r. 888

The EP proposes a transitional period for the purposes of providing time for notified bodies by proposing that Article 17 should apply only 12 months after the date of publication of this Regulation. Since the Council amendment proposing transitional period for chapter IV and V was build on similar reasoning, the compromise proposal was made to modify Article 79(2) as follows:

Article 79(2)

*~~Chapter IV, V and~~ **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).***

The Presidency would like to know whether Member States could be flexible to accept this change.

Annex II

Annex II, point (2a) / point (5) on energy use and accounting, r. 919a / 948a

In Annex II, point (2a) the EP sets a rule for calculating the carbon intensity of the energy used in the different battery life cycle stages. This amendment, unlike the Council's amendment in r. 948a, is not consistent with the Product Environmental Footprint (PEF) approach to energy accounting. However, in Annex II, point (2), r. 918, it is clearly said that the harmonized calculation rules for carbon footprinting should build on the PEF method. On top of that, it also goes against the EU system of (tradable) guarantees of origin set in REDII³.

As it seems really difficult to find a compromise wording that would bring the different positions closer together without putting in question the existing rules in the REDII, the Presidency proposes to reject the EP's amendment.

The Presidency would like to know whether Member States agree that the EP's amendment on energy use and accounting should be rejected.

Annex II, point (4) on stages and processes to be covered in the system boundary, r. 931

The EP suggests to extend the scope of the life cycle stages and processes that should be included in the life cycle system boundary to 'other relevant sourcing' (covering for ex. graphite) and 'transport of all raw and active material'.

Annex II, point (4)

Includes mining and [other relevant sourcing,] pre-processing [and transport of all raw and active materials], up to the manufacturing of battery cells and batteries components (active materials, separator, electrolyte, casings, active and passive battery components), and electric/electronics components.

The Presidency would like to know whether Member States could be flexible to accept this change.

Annex VI, r. 1021c

Point 2 of the EP's amendment to Annex VI, Part aa, a in r. 1021c has not been, unlike the other parts of this amendment, covered elsewhere in the document. The text reads as follows.

Critical raw materials contained in the battery above a concentration of 0,1 % weight by weight.

³ European Directive 2009/28/EC, Article 15.

Inclusion of this information on the battery label or QR code is a political point for the EP.

The Presidency would like to know whether Member States could be flexible to accept inclusion of this EP amendment to Article 13(5).

Further information - amendments that deserve attention

While the Presidency will not seek feedback from delegations during the WPE meeting specifically on the items that follow, it wants to draw attention of the delegations to a number of compromise proposals made in the text that the Presidency intends to agree with.

(New) Recital 76b on treatment of historical waste, r. 86b

During the WPE meeting on 26 July 2022 (WK 10659/2022), the Presidency informed the delegations about results of the court ruling C 181/20 - Vysocina Wind and the need to consider results of its legal analysis in the batteries regulation. The text of the proposal will be provided to delegations separately to this note.

Article 13(6a) on EC empowerment for alternative types of labelling, r. 303a

The EP suggests to empower the EC to adopt a delegated act to provide for alternative types of labelling in the light of technological and scientific progress.

Article 13(6a)

The Commission is empowered to adopt delegated acts in accordance with Article 73 to provide for alternative types of smart labels instead of or in addition to the QR-code, in view of technical and scientific progress.

Chapter V – third party verification body

In its General Approach the Council distinguishes among the third party verification and conformity assessment, which are both done by Notified Bodies. The Council also creates a specific definition of “third party verification body” that should be in charge of the third party verification of batteries due diligence policy. During technical meetings the EP supported by the EC expressed concerns regarding distinguishing the process of verification and conformity assessment since it is, at last, done by the same bodies, *i. e.* Notified Bodies. The EP thus stresses that the division of these two does not make any sense and it should be always Notified Bodies. Hearing the arguments the Presidency may consider deletion of the definition of the “third party verification body” added by the Council and also, throughout the text deletion of the reference to third party verification since that is part of conformity assessment in all cases, condition to reassurance of conformity assessment experts that this will not have impacts on the practical implementation (analysis ongoing). The deletion of the newly introduced term “third party verification body”, as well as “third party verification” itself, could unify the

terminology used so far in the area of conformity assessment and enable a better coherence of the Regulation with further legislation where conformity assessment is included

(New) Article 38a on obligations of suppliers of battery cells and battery modules, r. 453b

To enable manufacturers to comply with requirements of the regulation, the Presidency suggests to add a new article specifying the obligation of suppliers of battery cells and battery modules as follows.

Article 38a on 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 39(3a) / Article 45c(2) on liability, r. 478a / 536at

The issue of liability was discussed with the WPE on 26 September 2022 (WK 12427/2022) when preparing a revised mandate for the 3rd political trilogue. As follow up to the trilogue, the Presidency proposes to amend recital 70 as follows. This text would replace the liability article proposed by the EP.

Recital 70

*(70) Other EU legislative instruments that lay down requirements regarding batteries 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 are to address such civil liability.***

New EC's text on online marketplaces including revised Article 50 (4b), r. 641c+

In follow up to the feedback received from the VTC WPE meeting on 25 October 2022 (WK 14704/2022), to reflect the concerns and suggestions expressed by delegations, new text proposal on online marketplaces was revised as follows:

Proposed changes to the Council mandate marked in **red bold underline** and **revised changes in blue**

Recitals:

(CON) (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. ~~In order to ensure uniform conditions across the Union for the application for registration and the information to be provided, by means of a harmonised format, implementing powers should be conferred on the Commission.~~

NEW (77a) This Regulation specifies how the traceability of traders obligations laid down in Article 30(1)(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 natural or legal person selling 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, constitutes a trader in the meaning of the definition of trader in Regulation (EU) 2022/2065. In line with Regulation (EU) 2022/2065, providers of online platforms allowing consumers to conclude distance contracts with producers traders should obtain from those producers traders information about their compliance with the extended producer responsibility rules. As follows from Regulation (EU) 2022/2065, the implementation of the traceability of traders rules for the sale of batteries online should be subject to the enforcement rules of the Regulation (EU) 2022/2065.

NEW - Article 2, fifth paragraph

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

Articles:

NEW Article 45g(3)

(3) For the purpose of the enforcement of Article 50(4b) of this Regulation, Chapter IV of Regulation (EU) 2022/2065 shall apply, and any references therein to compliance with the relevant provisions of Regulation (EU) 2022/2065 shall be deemed to include Article 50(4b) of this Regulation.

Article 46

(3)(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;

(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 to fulfil their obligations laid down in Article 50(4b).

Article 50

4b. For the purpose of Article 30, paragraph 1, letters (d) and (e) of Regulation (EU) 2022/2065, providers of online platforms 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 in the Member State where the consumer is located 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) are complied with in the Member State where the consumer is located.



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~~4b. Online marketplaces shall only offer for sale in a Member State batteries, including those incorporated in appliances, light means of transport or vehicles, from producers registered in that Member State in accordance with Article 46 and which comply with the extended producer responsibility requirements in accordance with article 47.~~

Other provisions linked to online platforms:

Article 43 – EP proposal

Fulfilment service providers, including online marketplaces that provide, 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 Chapters II, III and VII.

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) ~~and III.~~

Article 60(4) – COM/CON/EP proposals

4. Distributors that supply batteries to end-users shall permanently provide in their retail premises, in an easily accessible and a clearly visible manner ~~and through their online marketplaces,~~ for the end-users of the battery, if applicable, the information listed in paragraph 1 and 2, and information on how the ~~end-users~~ **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~~ **categories** of batteries which the distributor or retailer has, ~~or had,~~ as new batteries in its offer. Distributors shall provide the information listed in paragraph 1 and 2 also when they sell their products through online platforms allowing consumers to conclude distance contracts with traders.

Chapter VIII on battery passport, r. 760+

A revision of Chapter VIII was discussed with delegations during the VTC WPE meeting on 25 October 2022, WK 13744/2022. In follow up to the discussion with delegations and with the EP, the Chapter and related Annex VIII were redrafted as follows. Note that changes in Article 65 and Article 65a are marked against the discussed text from WK 13744/2022. As the structure of Annex XIII was modified, changes are not highlighted. While this text is provided for information, the Presidency is still awaiting the EP's feedback on this version of the text.

Article 65 - Battery passport

1. From **[48 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 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, add something along the lines of: Such information shall be included to the extent applicable to the category or subcategory of battery concerned].~~ **the battery model and information specific to the individual battery and usage of that battery, as set out in Annex XIII. The battery passport shall consist of information accessible to the public, information accessible only to any natural or legal person with a legitimate interest in accessing and processing the information ('interested persons') under the conditions set out by the implementing act referred to in paragraph 7 and information accessible only to notified bodies, market surveillance authorities and the Commission, as set out in Annex XIII.**

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 ~~and which shall be printed or engraved on it.~~

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



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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 battery 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 ~~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.~~

76a. ~~For batteries~~ a battery that ~~have~~ has been subject to preparation for re-use, preparation for repurposing, repurposing, or remanufacturing, the responsibility for ~~the information in the battery passport~~ the fulfilment of the obligations with respect to the battery passport under paragraph 4 first subparagraph shall be transferred to the economic operator that ~~places~~ **has placed** that battery on the market or ~~puts~~ **has put** it into service. **The battery shall have** ~~It shall be considered as~~ a new battery passport **linked to the battery passport or passports of the original battery or batteries** ~~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~~ **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 when a new battery passport is established in accordance with paragraph 7, or after the battery has been recycled.~~

7. ~~9~~ **By [36 months after entry into force of the Regulation],** the Commission shall ~~adopt, by means of~~ implementing acts ~~to:~~ ~~a.~~ specify the actors that shall have access to information specified in **section 2 and 4 of 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 and to what extent they can download, share, publish and reuse that information~~ ~~to:~~ ~~the rules for accessing, sharing, managing, exploring, publishing and reusing of the information and data accessible through the battery passport.~~



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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 ~~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** ~~interested persons, notified bodies, market surveillance bodies and the Commission~~ 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)** ~~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 **the fulfilment of the obligations with respect to the battery passport under Article 65, paragraphs 4 or 6a**, ~~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** ~~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 applicable implementing act adopted pursuant to Article 65(79)**.*

~~(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.~~

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) Information regarding the prevention and management of waste batteries laid down in points (a) to (f) of Article 60(1).*



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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 RELATING TO THE BATTERY MODEL 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 test 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';*



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(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.

(new) Recital 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.

Annex VII, r. 1028+

During the discussions at technical level the EC provided a redrafted text of annex VII. To facilitate analysis of changes done to Annex VII, it is included below and marked as in the four-column table. Explanations for changes are provided in footnotes.

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

State of certified energy (SOCE)

Batteries in stationary energy systems and LMT batteries⁴

1. Remaining capacity;

⁴ Formulation may need to be adjusted depending on final scope of Article 14



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~~2. Overall capacity fade⁵~~

~~3. Where possible⁶, remaining power capability and power fade⁷;~~

~~4. Where possible⁶, remaining round trip efficiency;~~

~~5. Actual cooling demand⁸;~~

~~6. Evolution of self-discharging rates;~~

~~7. Where possible⁹, ohmic resistance and/or electrochemical impedance¹⁰.~~

Part B

*Parameters for determining the expected lifetime of **batteries in stationary energy storage systems and LMT**⁴ batteries:*

1. The dates of manufacturing of the battery and, where appropriate, the date of¹¹ 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 equivalent full charge-discharge cycles¹².

Annex X, part 2 on Social and environmental risk categories, r. 1107+

During the last political trilogue the Commission expressed concerns regarding some of the social and environmental risk categories added by both the Council and the Parliament to Annex X, part 2. The EC explained that it cannot support adding specifically 'access to information, public participation in decision-making and access to justice in environmental matters' since this is problematic as regards the implementation by companies. The EC therefore proposes

⁵ This is already captured by point 1: overall capacity fade = 1 minus remaining capacity

⁶ It may not always be possible without external equipment or taking battery out.

⁷ Power fade is superfluous because power fade = 1 minus remaining power capability.

⁸ This is no longer relevant, because it targeted mainly EV batteries (and even in EVs it wasn't practically possible because cooling is dealt with by the eVCU (vehicle calculator), since it is also used for motor, climate control, etc. without feedback to the BMS).

⁹ Not very sophisticated BMSs, which can be present in LMT batteries, might not be able to give ohmic resistance.

¹⁰ Electrochemical impedance cannot be measured without external equipment.

¹¹ The Council's proposal is modified, in particular keeping 'and' because date of manufacturing is always relevant, see definition of lifetime.

¹² Added to the Council's proposal, because in reality the driver never makes a full discharge.



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deleting this category from Annex X and adding new wording at the end of Article 45e(3), r. 536bg, as follows:

'It shall also provide information, 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.'

The Presidency proposes to accept this text as a balanced compromise.