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Her Excellency
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Subject: Notification 2026/173/AT

Draft Accompanying Act to the EU Battery Regulation – BattBegG

Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535

Madam,

Within the framework of the notification procedure laid down under Directive (EU) 2015/1535¹, the Austrian authorities notified to the Commission on 2 April 2026 the draft ‘Accompanying Act to the EU Battery Regulation – BattBegG’, under the reference 2026/173/AT (hereafter, the ‘notified draft’).

According to the notification message, the notified draft provides for the designation of competent authorities and the establishment of penalties, as required by Regulation (EU) 2023/1542 concerning batteries and waste batteries (hereinafter ‘the Batteries Regulation’)². Furthermore, the notified draft provides for mandatory participation in a collection and recycling scheme for the relevant battery categories, as well as provisions regarding market surveillance. In addition, the existing Austrian legal framework is being brought in line with the EU law, in particular with regard to definitions.

In this context, the notified draft refers to the obligations laid down in Article 62(6) of the Batteries Regulation concerning providers of online platforms that allow consumers to conclude distance contracts with producers. In particular, § 15(1), point 8, of the notified draft provides for administrative penalties where a provider of an online platform fails to

¹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

² Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023, p. 1.

collect the information required under Article 62(6) of the Batteries Regulation, while § 17 designates the Federal Minister for Agriculture and Forestry, Climate and Environmental Protection, Regions and Water Management as the authority responsible for the implementation of the notified draft.

In relation to the notified draft, on 24 April 2026 and 29 April 2026, the Commission sent two requests for supplementary information to the Austrian authorities asking them to provide further information regarding some aspects of the notified draft. The answers provided by the Austrian authorities on 6 May 2026 are taken into account in the following assessment.

The examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.

1. Detailed opinion

1.1 Assessment in the light of the Digital Services Act

The Commission takes note of the notification message and the answers sent by the Austrian authorities in reply to the Commission's requests for supplementary information, according to which the notified draft aims at aligning the national legal framework with the Batteries Regulation.

Article 62(6) of the Batteries Regulation specifies how the obligations applicable to providers of online platforms allowing consumers to conclude distance contracts with traders on the traceability of such traders, set out in Regulation (EU) 2022/2065 (the Digital Services Act, hereinafter 'the DSA')³, are to be applied in the case of producers offering to sell batteries to consumers located in the Union and in relation to the registers of producers established pursuant to the Batteries Regulation.

In particular, Article 62(6) of the Batteries Regulation states that, for the purposes of compliance with Article 30(1), points (d) and (e), DSA, providers of online platforms that allow consumers to conclude distance contracts with producers offering batteries for sale on an online marketplace shall obtain from those producers the details concerning their registration in the national trade register, including the registration number, as well as a self-certification by the producer offering batteries acting as a trader within the meaning of the DSA committing to only offer products that comply with the extended producer responsibility requirements laid down in that Regulation. In addition, Article 3(67) of the Batteries Regulation adopts the notion of 'online platform' as defined in Article 3, point (i), DSA.

Furthermore, Recital 104 of the Batteries Regulation clarifies that the implementation of the rules on the traceability of traders for the sale of batteries online is subject to the enforcement rules laid down in the DSA.

Since the relevant provisions of the Batteries Regulation for the purposes of assessing the scope of application of the notified draft (i.e. Articles 3(67) and Article 62(6) of the

³ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1.

Batteries Regulation) explicitly refer to the obligations laid down in Article 30 DSA, the notified draft will be assessed in the light of that Regulation.

a) Applicability of the DSA

Certain provisions of the notified draft, in particular § 15 (1), point 8, fall within the scope of the DSA.

Firstly, as regards the personal scope of the notified draft, § 15(1), point 8, applies to ‘any person who, as a provider of an online platform, does not collect information in accordance with Article 62(6) of the EU Batteries Regulation’. In as much as the notified draft does not provide a separate definition of ‘online platforms’ and it refers explicitly to the Batteries Regulation where that notion is defined within the meaning of the DSA, online platforms covered by the notified draft are those that fall within the definition of ‘online platforms’ within the meaning of Article 3, point (i), DSA.

Secondly, as regards the material scope of the notified draft, according to the notification message submitted by the Austrian authorities, the objective of the notified draft is to align the national legal framework with the Batteries Regulation. To that end, by providing for administrative penalties where providers of online platforms fail to collect the information required under that provision, § 15 (1), point 8, of the notified draft refers to the obligations imposed on providers of online platforms under Article 62(6) of the Batteries Regulation which, in turn, aims at specifying how providers of online platforms concerned must comply with the obligations provided for in Article 30(1), points (d) and (e), DSA.

Therefore, the Commission observes that, in as much as § 15 (1), point 8, of the notified draft includes objectives pursued by the DSA (i.e. addressing the obligations imposed on providers of online marketplaces under Article 30 of the DSA), it falls within the material scope of application of the DSA.

b) Monitoring and enforcement system of the DSA

The Commission recalls that the DSA is a horizontal legislative instrument that fully harmonises the rules for the provision of intermediary services in the Union⁴. Pursuant to Article 288 TFEU, regulations are directly applicable throughout the Union and thus in all Member States. Unlike in the case of directives, national implementing measures are not permitted in relation to regulations, unless the regulation itself leaves it to the Member States to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation⁵.

It is thus essential for the Member States to avoid enacting national legislation that may potentially overlap or be inconsistent with the provisions of the DSA. This would lead to fragmentation of the internal market, which is precisely what the harmonised rules of the DSA are meant to avoid, and lead to substantial legal uncertainty for both providers of intermediary services and the recipients of such services.

Therefore, in order to ensure that the DSA is fully effective, it is essential to preserve the harmonising effect of the DSA, as well as the supervision and enforcement system laid down therein.

⁴ DSA, recital 9.

⁵ Case C-606/10, ANAFE, EU:C:2012:348, para 72.

The Commission considers that the notified draft encroaches upon the DSA monitoring and enforcement system for the following reasons.

In accordance with Chapter IV of the DSA, the supervision and enforcement of the DSA is based on close cooperation between, on the one hand, the Digital Services Coordination (the ‘DSC’) designated pursuant to Article 49 DSA (and other competent national authorities designated under the DSA) of the Member State in which the provider of the service in question has its place of establishment within the meaning of Article 56(1) DSA and the DSCs of other Member States and, on the other hand, these national authorities and the Commission (Articles 56 to 58 DSA) in relation to the enforcement and supervision of the services qualified as VLOPs and VLOSEs. The designated competent authorities shall carry out their tasks in full compliance with the supervision and enforcement system laid down under the DSA and, as stated in Articles 56 and 57 thereof, through close cooperation and mutual assistance.

First, Article 1 § 17 of the notified draft empowers the Federal Minister for Agriculture and Forestry, Climate and Environmental Protection, Regions and Water Management to implement its provisions. Moreover, as indicated by the Austrian authorities in their reply to the request for supplementary information sent by the Commission services, that authority is responsible for monitoring compliance with the obligations laid down in Article 62(6) of the Batteries Regulation, while the competent criminal authorities are responsible for administrative penalty proceedings. In this respect, the Commission notes that Article 1 of the DSA-Begleitgesetz (‘DSA Accompanying Act’)⁶ designated and empowered the Austrian Communications Authority (‘KommAustria’) as the Digital Services Coordinator (‘DSC’), in accordance with Article 49 DSA. No other authorities were referred to in that act as being responsible for the supervision of intermediary services providers and enforcement of the DSA. Therefore, KommAustria is competent for the purposes of supervising compliance with the DSA, including in relation to the imposition of fines in accordance with Article 51 and 52 of that regulation *vis-à-vis* providers of online platforms which have their main establishment within the meaning of Article 56(1) DSA in Austria. Therefore, the Commission is of the opinion that Article 1 § 17 of the notified draft overlaps with the empowerment of KommAustria under the DSA Accompanying Act and ultimately creates legal uncertainty with respect to the underlying national law empowering KommAustria to supervise compliance with and enforce the DSA in accordance with Chapter IV DSA.

Second, Article 1 § 15(1), point 8, of the notified draft establishes administrative fines for providers of online platforms that fail to collect the information required under Article 62(6) of the EU Batteries Regulation. By imposing penalties on providers of online platforms failing to comply with the obligations laid down in Article 62(6) of the Batteries Regulation and, ultimately, in Article 30(1), points (d) and (e), DSA, that provision of the notified draft overlaps with the penalty system laid down by the DSA Accompanying Act in accordance with Article 52 DSA. In particular, that provision lays down the rules on penalties applicable to infringements of the DSA by providers of intermediary services within the competence of Member States, and it requires Member States to take all the necessary measures to ensure that they are implemented in

⁶ Bundesgesetz über den Koordinator-für-digitale-Dienste nach der Verordnung (EU) 2022/2065 über einen Binnenmarkt für digitale Dienste (Koordinator-für-digitale-Dienste-Gesetz – KDD-G), BGBl. I Nr. 182/2023.

accordance with Article 51 of the DSA as further specified below. The Commission takes the view that, by imposing penalties that appear to operate in parallel with the rules on penalties in the DSA Accompanying Act, the notified draft encroaches upon the Austrian enforcement system under the DSA, laid down pursuant to Articles 51 and 52 of that regulation.

The Commission notes that the Batteries Regulation aims at specifying, for the purposes of compliance with the DSA, how the obligations for providers of online platforms allowing consumers to conclude distance contracts with traders on the traceability of such traders, are to be applied in the case of producers offering batteries for sale to consumers located in the Union and in relation to the registers of producers established pursuant to the Batteries Regulation. As further clarified in recital 104 of the Batteries Regulation, the implementation of those rules is subject to the enforcement rules laid down in the DSA. Compliance with those obligations should therefore be subject to the DSA monitoring and enforcement system established under Chapter IV of the DSA. Consequently, insofar as the notified draft confers monitoring and enforcement powers on authorities other than the Austrian DSC (i.e. KommAustria) to supervise compliance with obligations under Article 62(6) of the Batteries Regulation, which, ultimately, aims to specify how to comply with Article 30(1), points (d) and (e), DSA, without designating those authorities as competent authorities within the meaning of Article 49 DSA, the notified draft is incompatible with the supervision and enforcement system established under Chapter IV of the DSA.

Furthermore, according to the information available to the Commission, the notified draft does not appear to limit the exercise of those monitoring and enforcement powers to providers for which Austria is the Member State of establishment. Accordingly, it appears to grant the relevant Austrian authorities (the Federal Minister for Agriculture and Forestry, Climate and Environmental Protection, Regions and Water Management in respect of the obligations laid down in Article 62(6) of the Batteries Regulation, and the authorities responsible for administrative penalty proceedings under Article 1 § 15(1), point 8) supervision and enforcement powers over providers of online platforms irrespective of their place of establishment. As noted above, this is contrary to the distribution of competences laid down in Article 56(1) DSA, according to which the Member State in which the main establishment of the provider of intermediary services is located shall have exclusive powers to supervise and enforce this Regulation.

For the reasons stated above, the Commission delivers a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 to the effect that it considers the provisions of the notified draft as indicated in the paragraphs above to be in breach of the above-mentioned provisions of the DSA, were it to be adopted without giving due consideration to the above remarks.

The Commission would remind the Austrian authorities that under the terms of Article 6(2) of Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State that has drawn up the draft technical regulation concerned, to postpone its adoption for four months from the date of its notification.

This standstill period therefore comes to an end on 7 August 2026.

The Commission further draws the attention of the Austrian authorities to the fact that under the above-mentioned provision the Member State that is the addressee of a detailed opinion is obliged to inform the Commission of the action that it intends to take as a result of the opinion.

The Commission furthermore invites the Austrian authorities to communicate to it on adoption the definitive text of the draft technical regulation concerned, in accordance with Article 5(3) of Directive (EU) 2015/1535.

Should your Government not comply with the obligations provided in Directive (EU) 2015/1535 or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections, or be otherwise in breach of EU law, the Commission may commence proceedings pursuant to Article 258 TFEU.

2. Comments

In addition to the detailed opinion as regards the interplay between the Batteries Regulation and the DSA, the Commission also wishes to make the following comments as regards the obligations imposed on so-called ‘self-importers’ by the notified draft. The notion of ‘self-importer’ is introduced in Article 1, § 2 Nr. 1 of the notified draft. In that regard, the Commission sees a risk of legal uncertainty as to who qualifies as a producer and thus has to fulfil the obligations incumbent on producers for the purpose of Chapter VIII of the Batteries Regulation.

Self-importers are defined in Article 1, § 2 No. 1 of the notified draft as *end-users* who purchase batteries from abroad for use in their business and for whom these batteries become waste within the business.

In the reply of 6 May 2026 to the Commission’s request for supplementary information of 24 April 2026, the Austrian authorities confirmed that the producer is the economic operator from whom the ‘self-importer’ imports the battery. Self-importers, within the meaning of the related definition in the notified draft, are hence at the receiving end of a business transaction or transfer of ownership. In other words, self-importers are end-users for the purposes of the Batteries Regulation.

The notified draft lays down obligations on so-called self-importers in Article 1 § 13 to treat the waste batteries generated and to submit a report via the register on the quantities of these waste batteries for each calendar year or to participate in a collection and recovery scheme for these batteries.-

By requiring that an end-user acts as a collector of battery waste and reports to the register, or participates in a collection and recovery scheme, the obligations imposed on self-importers go beyond the obligations imposed on end-users by Article 64 of the Batteries Regulation, contrary to the assessment of the Austrian authorities.

The obligations on so-called self-importers in Article 1 § 13 of the notified draft correspond to the obligations imposed on producers for the purposes of the extended producer responsibility regulated in Chapter VIII of the Batteries Regulation. Producers however are defined as actors which are supplying for the first time batteries to any other economic operator, or selling or reselling batteries to another actor, according to Article 3(1)(47) of the Batteries Regulation, and are not end-users.

The notified draft hence extends producer obligations to an actor which according to the Batteries Regulation qualifies as an end-user. This approach is liable to create uncertainty as to which economic operator is considered the producer and thus has to fulfil the

obligations incumbent on producers for the purpose of Chapter VIII of the Batteries Regulation.

Furthermore, the obligations in Article 13(1) of the notified draft apply to the so-called self-importer *in the case there is no producer*. However, for the purpose of Chapter VIII, it is mandatory that there is an economic operator which qualifies as the producer. The notified draft therefore imposes obligations on the basis of a presumed scenario which, under the Batteries Regulation, should not arise in the first place, and thus appears to anticipate a situation that would be contrary to the Regulation.

The Commission invites the Austrian authorities to take the above-mentioned comments into account.

The Commission furthermore reminds the Austrian authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Stéphane SÉJOURNÉ
Executive Vice-President