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Subject:	Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020
	- Guidance for further work

I. INTRODUCTION

1. On 10 December 2020, the Commission adopted a proposal for a Regulation on batteries and waste batteries, which replaces the current Directive. The aim of the proposal is to modernise the current legislative framework on batteries in the context of increasing production and demand of batteries. In this regard, the Commission put forward three main objectives for the proposed Regulation: strengthening the internal market for batteries; promoting a circular economy; and reducing the environmental and social impacts throughout a battery's lifecycle.
2. Following intensive preparatory work, on 17 March 2022 the Council agreed on a General Approach on the proposal for a Regulation and gave a mandate to the Presidency to engage in negotiations with the European Parliament.

II. STATE OF PLAY

3. To date, three political trilogues have taken place, on 20 April, 30 June and 11 October 2022. The trilogues were prepared by Coreper on 29 June and 5 October 2022. In parallel, intensive technical discussions have taken place in trilateral meetings at technical level and in the Working Party on Environment.
4. The co-legislators have reached provisional agreements on several key issues. This concerns notably the main provisions of Chapter II regarding sustainability and safety requirements. In addition, the discussions at the third political trilogue allowed for the definition of a possible landing zone on Chapter VIa concerning due diligence requirements for economic operators.
5. No agreement has been found yet on Chapter VII regarding the management of waste batteries. There are three open political issues in this Chapter: the addition by the Council of a second legal basis, Article 192(1) TFEU, for Chapter VII; the targets and timelines for the collection, material recovery and recycling efficiency of waste batteries; and the proposal by the Commission to add a provision regarding cross-border mechanisms for an extended producer responsibility (EPR) for batteries.
6. Technical work on the remaining chapters is ongoing. Possible additional political issues on those topics will be raised in preparation for the fourth political trilogue, which is tentatively scheduled for 9 December 2022.
7. With a view to the preparation of the fourth political trilogue, the Presidency wishes to explore delegations' positions, flexibilities and possible red lines on the open political issues in Chapter VII. The aim of the discussion is to enable the Presidency to prepare a proposal for a revised mandate ahead of the fourth trilogue on the proposal for a regulation on batteries and waste batteries.
8. The Presidency has not identified any flexibility in the Council regarding the addition of a second legal basis for Chapter VII. The Presidency therefore intends to remain firm on this point. To recall, the Presidency conditioned agreement on concessions made in Chapter VIa by the agreement on the environmental legal basis for Chapter VII.

9. It is clear that the collection, material recovery and recycling efficiency targets in Chapter VII and their associated timeline will be a key element in any political agreement with the European Parliament. While the Council's General Approach has opted for a more cautious approach, the Parliament's position is considerably more ambitious on both the numerical targets and the timelines on when to achieve them.
10. A first discussion on these points at the third political trilogue has brought clarity on the question of the methodology used by the Parliament to set the collection targets. Notably, the Parliament has clarified that its position on the collection target for LMT batteries is based on the methodology 'batteries available for collection', while all other targets are based on the methodology 'batteries placed on the market'. In addition, the co-legislators agreed to use the three preceding years as a baseline for calculating the targets within the method 'batteries placed on the market', instead of two years plus year-to-date as proposed by the Commission and the European Parliament.
11. On the basis of the discussions so far and the technical clarifications, the Commission has prepared a comparison of the positions of the three institutions, re-calculating the numerical targets on the basis of a harmonised methodology. The timelines are indicated assuming an entry into force of the regulation in 2023. In addition, the Commission has undertaken a revised assessment of the feasibility of achieving collection, material recovery and recycling efficiency targets. The table set out in the Annex presents the results of the Commission's recalculation and the maximum targets considered feasible by the Commission.
12. A previous version of this table was presented by the Commission during the third political trilogue. At that time, the European Parliament indicated a willingness to move towards the figures considered feasible by the Commission, with the exception of the material recovery targets for lithium, where the Parliament expressed strongly a desire for higher ambition.

13. With a view to reaching an agreement with the Parliament, the Presidency considers that it will be necessary for the Council to move in the direction of the figures considered feasible by the Commission, beyond the flexibility indicated by delegations in the past.
14. The issue of cross-border EPR mechanisms was raised by the Commission at the third political trilogue. This concerns cases where a battery is placed on the market in one Member State but becomes waste in another Member State. In this case, EPR fees are paid in the Member State where the battery was placed on the market, but the costs of waste management are incurred in the Member State where the battery becomes waste. The problem arises in particular in connection with end-of-life vehicles and waste electrical and electronic equipment.
15. The Commission has presented a proposal for a new Article 47(6) establishing a mechanism for cross-border cooperation to ensure that the producer or, where appointed, the producer responsibility organisation of a battery covers the cost of waste management of batteries incurred in a Member State that is different from the one where the battery was placed on the market.
16. The proposed new article has been analysed in detail by delegations, including at a meeting of the Working Party on Environment on 25 October 2022. Delegations also had the opportunity to submit written comments. As a result of the discussions, it has become clear that while delegations are open to the introduction of a provision to address this issue, many questions remain open regarding the practical implementation of the proposed cross-border EPR mechanism.
17. Given the advanced state of the negotiations on the proposed Batteries Regulation and the large amount of technical work that would still be necessary on such a cross-border EPR mechanism, the Presidency proposes not to include the new article as proposed by the Commission. Instead, the Presidency considers that the issue should be tackled as part of dedicated legislation on end-of-life vehicles and waste electrical and electronic equipment, and proposes including a recital in the Batteries Regulation to that effect.

III. ISSUES FOR POLITICAL GUIDANCE

18. In light of the above, the Presidency is seeking guidance on the following questions:

- a) Do you consider it possible to move towards the collection, material recovery and recycling efficiency targets for waste batteries assessed to be feasible by the Commission, as set out in the table in the Annex? Do you have absolute red lines on these targets?
- b) Do you agree to the Presidency's proposal not to include a separate article on cross-border EPR mechanisms in the proposed Batteries Regulation?

ANNEX

Comparison of waste collection targets based on the methodology “batteries placed on the market during the 3 preceding calendar years”

(changes resulting from the Commission recalculation in red, technical feasibility in green, changes in mandate from CRP in bold)

Targets	COM proposal ¹	EP mandate	Council mandate (GA)	Council mandate (CRP 10/10/22)	Technically feasible up to ²
Collection					
Waste portable batteries ³	45.2% by 2023	45.2% by 2023	45% by 2025	45% by 2023	45% by 2023
	65.3% by 2025	70.3% by 2025	65% by 2029	65% by 2029	67% by 2027
	70.7% by 2030	80.8% by 2030	70% by 2031	70% by 2031	73% by 2030
Waste portable batteries of general use ⁴	-	45% by 2023 70% by 2025 80% by 2030	-	No flexibility, review clause suggested	Separate sub- target without review not feasible
Waste LMT batteries	-	43.75% by 2025 61.85% by 2030	54% by 2031	54% by 2029	43% by 2025 61% by 2030
Material recovery					
Lithium	35% by 2026	70% by 2026	35% by 2027	40% by 2027	50% by 2027
	70% by 2030	90% by 2030	70% by 2031	70% by 2031	80% by 2031
Recycling efficiency					
Nickel-cadmium batteries ³	-	85% by 2025 >85% by 2030	75% by 2026	80% by 2026	80% by 2025
Other waste batteries ³	50% by 2025	50% by 2025 70% by 2030	50% by 2026	50% by 2026	50% by 2025

¹ Commission’s proposal and European Parliament mandate were provided in methodology “batteries placed on the market during that year and the 2 preceding calendar years”. Since a POM target of 75%/85% for waste LMT batteries in the EP mandate would be impossible to reach (more

than 100% would need to be collected), it is assumed that the target was provided in a new “available for collection” methodology and recalculated as equivalent POM methodology “batteries placed on the market during the 3 preceding calendar years” .

² Council mandate and JRC technical feasibility analysis were already provided in POM methodology “batteries placed on the market during the 3 preceding calendar years”

³ Batteries Directive 2006/66/EC: collection target for waste batteries of 45% by 2016, recycling efficiency target for nickel-cadmium batteries of 75% by 2011 and for other batteries of 50% by 2011.

⁴ Recital 81 is proposed to be amended: The collection targets for waste portable batteries and light means of transport batteries are to be reviewed. Such review may also address the possibility to introduce two sub-categories of portable battery: rechargeable and non-rechargeable, with separate collection rates.
