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#### **NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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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 - Progress report

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#### **I. INTRODUCTION**

On 10 December 2020, the Commission transmitted to the Council a 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<sup>1</sup>.

The technical examination of the proposal is being carried out by the Working Party on the Environment (WPE).

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<sup>1</sup> Doc. 13944/20 + ADD 1.

The proposal, based on Article 114 TFEU, aims at modernising the EU's legislative framework for batteries, in a context of increased demand for battery development and production. Having identified three groups of problems resulting from market and information failures and closely related to the functioning of the internal market (i.e. the lack of framework conditions providing incentives to invest in production capacity for sustainable batteries, a sub-optimal functioning of recycling markets and insufficiently closed material loops, and social and environmental risks not covered by EU environmental law), the proposal sets out three strongly interlinked objectives:

- strengthening the functioning of the internal market by ensuring a level playing field through a common set of rules;
- promoting a circular economy;
- reducing the environmental and social impacts throughout all stages of the battery life cycle.

The Portuguese Presidency issued a number of non-papers and a draft compromise text on Chapter II (Sustainability and safety requirements) and on Chapter VII (End-of-life management of batteries) and prepared a progress report, which was examined by the Environment Council on 10 June 2021<sup>2</sup>. At this occasion, ministers pointed out several outstanding key issues, in particular:

- the legal basis;
- the need for flexibility in establishing and implementing the management of waste batteries;
- the assessment and restrictions of chemicals in batteries;
- the supply chain due diligence requirements;

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<sup>2</sup> Doc. 9052/1/21 REV 1.

- the sustainability and performance requirements for batteries;
- the collection and recycling targets;
- the inclusion of a separate category of light means of transport batteries, and
- the implementation deadlines.

Ministers also expressed concerns about the large number of delegated and implementing acts.

## II. STATE OF PLAY IN THE COUNCIL<sup>3</sup>

The Slovenian Presidency endeavoured to address these issues during the 13 informal videoconferences held to date on the batteries proposal. The discussion took place mainly on the basis of written comments submitted by delegations, and non-papers issued by the Presidency. Draft Presidency compromise text<sup>4</sup> covering all Chapters, except Chapter VII of the proposal, has also been circulated. Revised compromise text covering all Chapters will be prepared and distributed by the end of the Presidency.

The state of play on the main issues is as follows:

### **Legal basis**

It was considered whether Article 192 TFEU should be added as legal basis to the Commission proposal, considering in particular the nature of Chapter VII on management of waste batteries.

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<sup>3</sup> The Environment, Public Health and Food Safety Committee of the European Parliament has tabled its draft report in September laying down 232 amendments to the Commission proposal.

<sup>4</sup> Doc. 13135/21.

## **Scope**

Some Member States wish to subject battery cells to the same obligations as for batteries. In addition, there is a general support to create a separate category of batteries for light means of transport batteries. However, some related issues remain open, such as which requirements should apply to this category, how to organise separate collection of these batteries and should these batteries subject to separate collection targets.

## **General provisions**

The exact wording of some definitions will have to be adapted at a later stage, when the text of related provisions is agreed. Similarly, the discussion on deadlines, transitional periods, implementing and delegated acts will have to be deferred until the text of the compromise is further stabilised.

## **Sustainability requirements**

While there is a general support for ambitious sustainability requirements, several Member States call for reasonable deadlines in view of enabling economic operators to adapt to the stricter requirements laid down in the proposal, and for feasible approaches concerning the calculation of different parameters considering the manufacturing plant level. Concerns have also been raised about the consistency with international rules and sectoral legislation. The main issue with regard to sustainability requirements concerns however the procedure on the restriction of chemicals, where several Member States take the view that chemicals should remain under the single ‘umbrella’ of REACH.

## **Conformity of batteries, notification procedures, market surveillance**

Member States express concerns with regard to the relationship between the presumption of conformity and battery testing (Article 15) and to the relationship between harmonized standards and common specifications (Articles 15 and 16), and on the assessment modules for the conformity assessment of batteries (Article 17 and Annex VIII), where alternative modules are being suggested.

With regard to notification procedures some Member States suggest an obligatory accreditation certificate for the notification of conformity assessment bodies (Article 25).

As to market surveillance, Member States draw attention on the potential duplication of provisions and the need to ensure further alignment with the reference text of the new legislative framework for products and with the Market Surveillance Regulation.

## **Obligations of economic operators**

Many concerns have been raised as regards the obligations of the authorised representative, its designation process by the manufacturer, its mandate and its responsibilities. The need to address questions related to the obligations of online marketplaces, to the requirements to remove and replace batteries (in Article 11) and to the obligations of different economic operators in the register of producers as regards, the extended producer responsibility has been raised.

## **Information and labelling requirements and electronic exchange of information**

There is a general concern about the lack of clarity and the potential duplication of data and information requirements. In particular, Member States question the requirements of the battery passport, the data and information that it includes and its relationship with, and connection to, the Electronic Exchange System, and to the Battery Management System. Some Member States suggest to include in the Annex to the proposal a table laying down all information requirements.

## **Supply chain due diligence obligations**

As regards due diligence requirements, a majority of Member States point out the need to ensure consistency with the horizontal legislation, namely the announced legislative initiative on sustainable corporate governance, and with other legal acts or guidelines governing this area.

Delegations support the allocation of the supply chain due diligence requirements to a separate chapter.

The procedure for assessing the compliance with the due diligence obligations deserves particular attention, and Member States invite the Commission to prepare a guideline to be issued timely.

### III. CONCLUSION

At present, delegations maintain a general scrutiny reservation. However, on the basis of the discussions held so far the Presidency takes the view that the draft compromise texts, which are largely based on comments by delegations, substantially contribute to clarifying the text.

Many provisions have been redrafted to improve the consistency of the text, notably to clarify the obligations of different economic operators as regards the placing of batteries on the market or ensuring the appropriate management of waste batteries. Significant change has been introduced on market surveillance, on supply chain due diligence requirements and in the modules for conformity assessment of batteries with regard to market surveillance. Some changes have also been made in the structure of information and labelling requirements to clearly formulate obligations and to avoid the duplication of provisions.

Still, and with a view to providing a clear legislative framework, further work will be necessary on questions of a more horizontal nature, such as the level of ambition with regard to targets and deadlines, the requirements for the management of waste batteries and the link with the Waste Framework Directive, the clarification of concepts and processes regarding the second life of batteries and, of course, the empowerment to the Commission. In addition, a number of technical outstanding issues, due *inter alia* to the complexity of the proposal, call for further examination. This concerns notably the allocation of light means of transport batteries to a separate category, the information requirements, the level of flexibility with regard to the management of waste batteries, and the requirements for batteries re-use or repurposing.

The additional discussions planned in December on selected issues should enable further progress in preparing of a revision of the compromise proposal.

The Slovenian Presidency is committed to continue working on a revised compromise text and will coordinate with the incoming French Presidency in order to facilitate the continuation of the discussions in the WPE and to ensure the smooth progress of the file in the Council.

The Permanent Representatives Committee is invited to take note of the progress report and to forward it to the Council.

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