



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 6 December 2004**

---

**Interinstitutional File:  
2003/0282 (COD)**

---

**15537/04**

**LIMITE**

**ENV 662  
ENT 153  
CODEC 1312**

**NOTE**

---

from: General Secretariat of the Council  
to: Committee of Permanent Representatives

---

No. prev. doc.: 15204/04 ENV 641 ENT 151 CODEC 1281  
No. Cion prop.: 15494/03 ENV 655 ENT 221 CODEC 1704 - COM(2003) 723 final

---

Subject: **PREPARATION OF THE MEETING OF THE COUNCIL  
(ENVIRONMENT) ON 20 DECEMBER 2004**  
Proposal for a Directive of the European Parliament and of the Council on  
**batteries and accumulators** and waste batteries and accumulators  
– Political agreement

---

**I. INTRODUCTION**

The Commission submitted the above-mentioned proposal to the Council in December 2003.

The European Parliament adopted its first-reading opinion in April 2004.

The Working Party on the Environment began examining the proposal in June 2004 and has subsequently discussed it on several occasions, most recently on 3 December 2004.

Coreper discussed key outstanding issues on 24 November and 1 December 2004.<sup>1</sup>

---

<sup>1</sup> DK/MT/UK have parliamentary scrutiny reservations.

## II. PRESIDENCY COMPROMISE PACKAGE

The Addendum to this note contains a new **global compromise package** suggested by the Presidency and to be examined first by the Working Party on 7 December. Therefore, delegations' positions are recorded in the present note and not in the Addendum.

This compromise package includes, in particular:

- A. a **partial cadmium ban** for portable batteries excluding cordless power tools but with an early review of the appropriateness of extending the ban to such tools (Article 4);
  - B. **collection targets** for the short and medium term that all Member States should be able to achieve, with a requirement for the Commission to review the possibility of setting further targets for later years (Articles 13 and 29);
  - C. a slightly later **transposition date** (Article 32);
  - D. further **clarification** on certain technical issues, including permitting requirements for collection points, recycling and recovery and the relationship with the ELV and WEEE Directives (Articles 9(1), 20(2), 15(1) and Annex III).
- A. Restrictions on the use of cadmium - Article 4

The Presidency's global compromise package set out in the Addendum to this note envisages a **partial ban on cadmium** in batteries. The ban would apply only to portable batteries. It would not apply to industrial or automotive batteries or batteries intended for use in emergency lighting, medical equipment, alarm systems or cordless power tools. However, the Commission would have to review the exemption for cordless power tools and, if appropriate, make relevant proposals (for adoption through co-decision procedure).

Many delegations consider this suggestion **too limited**:

- BE/DK/ES/LT/HU/AT/PL/SI/FI/SE would prefer a wider ban covering cordless power tools after a four year transitional period (but could accept the inclusion of a procedure permitting the extension of this transitional period).
- ES opposes the suggested exemption for emergency lighting and alarm systems used in private houses, offices and shops.

However, other delegations believe that the suggested ban goes **too far**:

- FR cannot see the justification for any form of cadmium ban, while EL/LV/UK have sympathy for this position;
- DE does not accept the inclusion of a review clause and requests a five-year transitional period for appliances incorporating batteries (such as razors, toothbrushes and hand-held vacuum cleaners).

As a consequential change, the Presidency's global compromise package set out in the Addendum to this note contains no reference to the **closed loop system** proposed in the Commission's original proposal. Instead, Article 8 sets an overarching aim for the Directive: to maximise the separate collection of waste batteries.

The Commission and SI have a reservation on the changes relating to the closed loop system.

The **definitions of the different battery types** ("portable", "automotive" and "industrial" batteries - Article 3(3), (5) and (6)) are an essential element of the Directive. In particular, they affect the scope of the partial cadmium ban provided for in Article 4.

There is agreement on the definition of "automotive" batteries. There is broad support for the Presidency's suggestions for the definitions of "portable" and "industrial" batteries. The principles underlying these suggestions are that the "portable" category should be the default one and that the recitals should list examples of the different types of batteries to aid interpretation of the definitions.

However:

- ES/PT believe that the examples should appear in the definitions in Article 3 and not in the recitals;
- DE wants more detail in the definition of "industrial" batteries;
- IT wants to define all non-rechargeable batteries as "portable" batteries and has doubts about the reference to their ability to be hand carried;
- FR has a scrutiny reservation.

#### B. Collection targets - Article 13

All delegations and the Commission support or can accept the **structure** that the Presidency has suggested for Article 13.

The Presidency's global compromise package set out in the Addendum to this note provides for **collection targets** of 20%, 4 years after transposition of the Directive, and 40%, 7 years after transposition (or, in other words, 6 and 9 years after entry into force). The Commission would have to review the appropriateness of these targets and the possibility of introducing further ones for later years (Article 29(1)(b)).

However, BE/DK/DE/EE/ES/FR/IE/NL/AT/SK/SE have previously indicated that they supported or could accept a 60% target after 10 years.

Article 13(4)(a) provides for the adoption of **transitional arrangements** through comitology for Member States facing specific difficulties. Many delegations previously had concerns about this, requesting:

- the reinsertion of the former Article 14 (CZ/EL/CY/LV/PL) enabling the Commission alone to agree to requests from Member States for an extended deadline for the collection targets;
- the inclusion of explicit transitional arrangements in Article 13 or a later transposition date in Article 32 (CY/LV/LT/MT/PL);
- targets that all Member States can meet (LV/HU/UK).

C. Transposition date - Article 32

The Commission proposed 18 months for transposition of the Directive.

CZ/FR/IE/IT/CY/LV/MT/PL/SI/UK request 30 months.

The Presidency suggests 24 months.

This takes account of the fact that Article 13 already provides Member States with more time to meet the collection targets. The 160 grams per inhabitant target in the Commission's original proposal is roughly equivalent on average to the 40% collection target in the Presidency's compromise package. However, while the Commission's proposal would have required Member States to achieve this target within four years of transposition, the Presidency is suggesting seven years. Together with the additional 6 months for transposition, this provides an additional three and a half years compared to the Commission's proposal.

D. Treatment, recycling and disposal - Articles 15 & 15a and Annexes III & IV

There are many concerns about the Commission's proposals on treatment and recycling, particularly:

- the total prohibition on the disposal of all waste industrial and automotive batteries provided for in Article 15a (CZ/EL/IT/PT);
- the practicality, proportionality and environmental benefits of the proposed recycling targets in Annex III (CZ/EL/IT/LV/MT/SK/UK) or the need for more time to achieve them (CY/LV/MT/PL);
- that it would be preferable, rather than fixing specific recycling targets, simply to require all collected batteries and accumulators to undergo a recycling process and the removal of all heavy metal content for re-use or environmentally sound disposal (EE/ES/FI/PL/PT/SE).

The Presidency's global compromise package set out in the Addendum to this Note repackages Articles 15 and 18, moving the technical detail to new Annexes that can be amended or supplemented through comitology in the light of technical or scientific progress.

CZ/DK/AT/UK have indicated that, while they are still studying the Presidency's suggestions, they view them favourably.

Other delegations have reserved their positions but expressed concern about the possibility of departing from the IPPC definition of "best available techniques" (EL/ES/FR/IT/PT) or on the specific recycling targets in Annex III (EL/ES).

The representative of the Commission has stressed that a high level of collection and recycling is one of the central planks of the Commission's proposal and necessary to ensure a higher level of environmental protection than Directive 91/157/EEC, which already lays down basic requirements to minimise batteries' environmental impact. A permit would not be necessary for collection points that simply consist of a cardboard box where consumers may dispose of waste batteries.

### III. OTHER ISSUES

Other outstanding issues relate to:

1. the **legal basis** - AT would prefer a Directive based on Article 175(1) alone, while SE has a scrutiny reservation;
2. the **definition of "battery and accumulator"** (Article 3(1)) - IT/LV/HU/UK request separate definitions, and IT/UK different requirements, for batteries and accumulators. DK/MT/FI/UK request clarification on whether hydrogen cells would fall within this definition, while IT suggests their exclusion from the scope of the Directive;
3. the **definition of "producer"** (Article 3(12)) - EL requests the exclusion from the scope of the batteries Directive of batteries contained in appliances or vehicles, to avoid overlap with the ELV and WEEE Directives. IT/UK also have concerns about possible double charging. A new second sentence in Article 20(2) seeks to address these concerns. IT requests the inclusion of a *de minimis* rule to exclude non-rechargeable batteries contained in appliances and representing no more than 10% of the total weight of the appliance. The Commission has a scrutiny reservation;
4. the **definition of "placing on the market"** (Article 3(15)) - CZ/UK suggest deletion;
5. **collection schemes** (Article 9) - HU suggests deleting the reference to population density from paragraph 1(a), while PT suggests adding an explicit reference to distributors to paragraph 2(b);
6. **treatment** (Article 15) - FI/SE request the addition of "and disposal" after "treatment and recycling" in paragraph 1;

7. **producers' financial responsibility for collection, treatment and recycling costs** (Articles 20 to 24) - BE/DE would like clarification of Article 20(1). FR/PT/SE/UK have doubts about the prohibition in Article 20(3) on visible fees for consumers. FR wishes the "may" in Article 20(4) to be a "shall". CZ/DE/FR have concerns about Article 22 (FR about registration being a precondition for market access and CZ/DE about the requirement to register all producers). BE/FR/IT/SI/SE/UK suggest the deletion of Article 24. DK/SE regret the absence of a provision modelled on Article 8(3) of the WEEE Directive dealing with the division of costs between producers. ES/IE/PT have concerns about the deletion of the requirements for guarantees and on historic waste. The representative of the Commission indicated that her Institution could be flexible on the detailed mechanisms set out in Articles 22 to 24, so long as Member States had a clear obligation under the Directive to ensure that producers met their financial responsibilities and there were minimum requirements to ensure the proper functioning of the internal market;
8. **labelling** (Article 27) - PT opposes the deletion of the former requirement to indicate the capacity of batteries;
9. **national implementation reports** (Article 28) - FR suggests the deletion of "any measures that they take to encourage" from the chapeau. Cion has a reservation on the changes to its proposal (deletion of Articles 5 and 17 and inclusion of softer requirements in Article 28). IT/SI request 18 months for the preparation of reports, rather than 9, and HU suggests 12;
10. **review** (Article 29) - IT suggests deleting the explicit reference to lead from paragraph 1(a). IE/IT/UK are concerned about the Commission reviewing the issues mentioned every 3 years;
11. **penalties** (Article 31) - IT/UK are concerned about the last sentence of the Article, since it does not appear to be in line with the standard formulation;
12. **voluntary agreements** (Article 33) - DE suggests adding Article 4 to the list of relevant provisions, to permit the implementation of any new restrictions on the heavy metal content of batteries through voluntary agreements. BE suggests the addition of Articles 13, 15, 18 and 20.

#### IV. CONCLUSION

Coreper should assess the extent to which the Presidency's global compromise package resolves the outstanding issues summarised above, with a view to permitting the Council to reach political agreement on this file on 20 December 2004.

---