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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	6166/23
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) - Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 7 February 2023, the Commission submitted to the European Parliament and the Council a proposal amending Directive 2012/19/EU on waste electrical and electronic equipment (WEEE directive).
2. The main objective of the proposed revision is to ensure compliance with the Court of Justice of the European Union judgment (case C-181/20¹) which declared Article 13(1) of the WEEE directive partially invalid by reason of non-justified retroactive effect. The Commission proposal aims thus to clarify the time from when producers of different electrical and electronic equipment both for private households and for users other than private households have to provide for the financing of the management of the waste that occur from their products (i.e. photovoltaic panels; other products falling under the scope of the WEEE directive / ‘open scope’ EEE).

¹ <https://curia.europa.eu/juris/documents.jsf?num=C-181/20>

3. More specifically, the main amendments to the WEEE directive with a view to correcting the abovementioned retroactive effect relate to:
- Article 13(1) - adjusting the timelines for the financing of the collection and treatment in respect of WEEE from users other than private households;
 - Article 12(1) - similar adjustment of timelines as this article contains a parallel provision for the financing obligation in relation to WEEE for private households which can be also regarded as retroactive in light of the Court's reasoning, even though not specifically targeted by the Court's judgment;
 - Article 12(3) – alignment with Article 12(1);
 - Article 12(4) – clarifying that it refers only to WEEE from products other than photovoltaic panels;
 - Article 15(2) – adjusting the timeline for marking of electrical and electronic equipment.
4. In the European Parliament, the Committee on the Environment, Public Health and Food Safety (ENVI) is responsible for the proposal. Ms Anna Zalewska (ECR, PL) has been appointed rapporteur. The votes in the ENVI Committee and the EP plenary are scheduled for September and October 2023, respectively.
5. The Committee of the Regions and the Economic and Social Committee were consulted. The European Economic and Social Committee adopted its opinion on 22 March 2023.
6. The Working Party on Environment examined the proposed revision of the WEEE directive at three meetings during the Swedish Presidency. A first compromise text² presented by the Presidency at the Working Party on 8 June 2023 received broad support. Following these discussions, the Presidency maintains the elements of the first compromise text as discussed at working level with no changes, as they seem to be the most appropriate for reaching an agreement on the text as a whole.

² WK 7348/23 INIT.

7. The working level has also considered the proposal from one delegation with regard to the Council potentially requesting a study from the Commission pursuant to Article 241 of the Treaty on the Functioning of the European Union. It is the Presidency's assessment that there was not sufficient support at working level for such option to be pursued further.

II. MAIN ELEMENTS OF THE PRESIDENCY COMPROMISE TEXT

8. The compromise text amends the Commission proposal on a number of points, in response to queries and requests from delegations while maintaining the aim to ensure compliance with the ECJ ruling and pre-empt future Court cases on grounds of non-justified retroactive effect. It focuses on the following aspects:
- The Presidency proposes to rectify a clerical error identified by the Commission in Article 13(1) whereby the second and third subparagraphs are reintroduced as they were unintentionally deleted in the Commission proposal;
 - While reintroducing the second and third subparagraph of Article 13(1) the Presidency also proposes to amend them in a corresponding manner to Article 12(4) so as to ensure consistency between waste from private households and waste from users other than private households;
 - Some Member States have asked for a longer transposition period and the Presidency consequently proposes to extend the transposition period from twelve to eighteen months. It is the same transposition period as applied when the WEEE directive entered into force 2012;
 - The Presidency also proposes to add a recital (7a) to clarify that, following the amendments in the proposal, Articles 8 and 14 of the Waste Framework Directive will apply regardless concerning waste from photovoltaic panels and 'open scope' EEE.

III. CONCLUSION

The Permanent Representatives Committee is invited to endorse the compromise text set out in the Annex³ with a view to agreeing on a mandate for negotiations with the European Parliament.

³ Changes to the Commission proposal are set out in **bold underlined**, while ~~strike through~~ indicates deletions.

Proposal for a
Directive of the European Parliament and of the Council amending Directive 2012/19/EU on
waste electrical and electronic equipment (WEEE)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) entered into force on 13 August 2012, replacing Directive 2002/96/EC.
- (2) Photovoltaic panels, which were not in the scope of Directive 2002/96/EC, were included in the scope of Directive 2012/19/EU from 13 August 2012, when they were added to category 4 of Annexes I and II referenced in Article 2(1)(a) of Directive 2012/19/EU.

¹ OJ C , , p. .

² OJ C , , p. .

- (3) Article 13(1) of Directive 2012/19/EU establishes that producers of electrical and electronic equipment (EEE) are to bear the costs for the collection, treatment, recovery and environmentally sound disposal of waste EEE (WEEE) from users other than private households resulting from products placed on the market after 13 August 2005.
- (4) On 25 January 2022, the Court of Justice of the European Union, in its judgement in case C-181/20³, declared Article 13(1) of Directive 2012/19/EU invalid in so far as it concerns photovoltaic panels placed on the market between 13 August 2005 and 12 August 2012, by reason of non-justified retroactive effect. The Court held that because prior to the adoption of Directive 2012/19/EU, the EU legislature left Member States, pursuant to Article 14 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste⁴, the choice of requiring the costs relating to the management of waste from photovoltaic panels to be borne by current or previous waste holders or by the producer or distributor of the photovoltaic panels, and subsequently established a rule, in Article 13(1) of Directive 2012/19/EU under which those costs must in all Member States be borne by producers, including in relation to products the latter had already placed on the market at a time when the former legislation was in force, the latter rule must be regarded as applying retroactively, and is therefore liable to infringe the principle of legal certainty. The Court held that such retroactivity applies as regards photovoltaic panels placed on the market prior to the entry into force of Directive 2012/19/EU, on 13 August 2012.

³ Judgment of the Court (Grand Chamber) of 25 January 2022 (request for a preliminary ruling from the Nejvyšší soud – Czech Republic) – VYSOČINA WIND a.s. v Česká republika – Ministerstvo životního prostředí (Case C-181/20), *OJ C 222*, 6.7.2020

⁴ *OJ L 312*, 22.11.2008, p. 3–30

- (5) The Court's judgment declaring Article 13(1) of Directive 2012/19/EU partially invalid directly implies that it should be amended so that it does not apply with regard to waste from photovoltaic panels from users other than private households placed on the market between 13 August 2005 and 13 August 2012. Furthermore, in light of the considerations spelled out in the Court's judgement, it is necessary to amend Directive 2012/19/EU also in relation to the financing of waste from photovoltaic panels from private households to which Article 12 of Directive 2012/19/EU applies and in relation to other EEE, both regarding waste from private households and from users other than private households, which are in a position comparable to that of photovoltaic panels.
- (6) Article 2(1)(b) of Directive 2012/19/EU from 15 August 2018 extends the scope of application of that Directive to all EEE. Similarly to photovoltaic panels, EEE which did not fall within the scope of Directive 2012/19/EU pursuant to its Article 2(1)(a), but which entered in its scope from 15 August 2018 pursuant to its Article 2(1)(b) ('open scope EEE'), was previously not included either in the scope of application of Directive 2002/96/EC. Therefore, prior to the adoption of Directive 2012/19/EU, Member States were, pursuant to Article 14 of Directive 2008/98/EC, left the choice of requiring the costs relating to the management of waste from that EEE to be borne by current or previous waste holders or by the producer or distributor of that equipment. Therefore, applying Article 13(1) of Directive 2012/19/EU to open scope EEE would, for the reasons set out in the Court's judgment in case C-181/20, be contrary to the principle of legal certainty. As Directive 2012/19/EU however includes open scope EEE only from 15 August 2018, Article 13(1) should be amended so to not apply to open scope EEE placed on the market between 13 August 2005 and 15 August 2018.

- (7) As a mirroring provision of Article 13(1) of Directive 2012/19/EU, which applies in respect of users other than private households, Article 12(1) read in conjunction with Article 12(3) of Directive 2012/19/EU imposes the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from private households on producers with regard to products placed on the market as from 13 August 2005. For the reasons set out in the Court's judgment in case C-181/20, in so far as these provisions apply to the financing of those waste management costs for photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012 and to open scope EEE placed on the market between 13 August 2005 and 15 August 2018, they would equally apply retroactively in a way that is contrary to the principle of legal certainty. Therefore, Article 12 of Directive 2012/19/EU should be amended in such a way as to not apply to photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012 neither to open scope EEE placed on the market between 13 August 2005 and 15 August 2018.

(7a) **Directive 2012/19/EU supplements Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste, which is one of the general waste management legislative acts in the Union. Therefore, Articles 8 and 14 of Directive 2008/98/EC apply concerning the management of waste from photovoltaic panels and waste from open scope EEE which do not fall under the scope of Directive 2012/19/EU by virtue of the amendments to Article 12 and Article 13 thereof by this Directive.**

- (8) Articles 14(4) and 15(2) of Directive 2012/19/EU provide for EEE placed on the market to be marked, preferably in accordance with the European standard EN 50419, which was adopted by Cenelec in March 2006. This standard has been revised in order to update the references it contains to Directive 2012/19/EU. Therefore, the reference to the standard in Article 14(4) and in Article 15(2) should be updated to refer to the updated version of the standard EN 50419, which was adopted by Cenelec in July 2022.

- (9) Article 15(2) of Directive 2012/19/EU provides that in order to enable the date upon which the EEE was placed on the market to be determined unequivocally, Member States shall ensure that a mark on the EEE specifies that the latter was placed on the market after 13 August 2005. As a consequential amendment from the amendments to Articles 12 and 13, Article 15(2) should be amended with respect to photovoltaic panels and open scope EEE, so that it clarifies that the marking obligation applies only from 13 August 2012 in relation to photovoltaic panels and only from 15 August 2018 in relation to open scope EEE.
- (10) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁵, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

⁵ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendment of Directive 2012/19/EU

Directive 2012/19/EU is amended as follows:

(1) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that producers provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households that has been deposited at collection facilities set up under Article 5(2) according to the following:

- (a) for WEEE resulting from EEE referred to in Article 2(1)(a) other than photovoltaic panels where such EEE was placed on the market after 13 August 2005;
- (b) for WEEE resulting from photovoltaic panels where such photovoltaic panels were placed on the market from 13 August 2012; and
- (c) for WEEE resulting from EEE referred to in Article 2(1)(b) and which does not fall within the scope of Article 2(1)(a) where such EEE was placed on the market from 15 August 2018.’;

(b) in paragraph 3, the first subparagraph is replaced by the following:

‘3. Each producer shall be responsible for financing the operations referred to in paragraph 1 relating to the waste from his own products. The producer may choose to fulfil this obligation either individually or by joining a collective scheme.’;

(c) paragraph 4 is replaced by the following:

‘4. The responsibility for the financing of the costs of the management of WEEE from products referred to in Article 2(1)(a) other than photovoltaic panels placed on the market on or before 13 August 2005 (‘historical waste’) shall be borne by one or more systems to which all producers existing on the market when the respective costs occur contribute proportionately, e.g. in proportion to their respective share of the market by type of equipment.’;

(2) in Article 13, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households is to be provided for by producers according to the following:

- (a) for WEEE resulting from EEE referred to in Article 2(1)(a) other than photovoltaic panels where such EEE was placed on the market after 13 August 2005;
- (b) for WEEE resulting from photovoltaic panels where such photovoltaic panels were placed on the market from 13 August 2012; and
- (c) for WEEE resulting from EEE referred to in Article 2(1)(b) which does not fall within the scope of Article 2(1)(a) where such EEE was placed on the market from 15 August 2018’;

For historical waste from EEE referred to in Article 2(1)(a) other than photovoltaic panels being replaced by new equivalent products or by new products fulfilling the same function, the financing of the costs shall be provided for by producers of those products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

For other historical waste from EEE referred to in Article 2(1)(a) other than photovoltaic panels, the financing of the costs shall be provided for by the users other than private households.

(3) in Article 14, paragraph 4 is replaced by the following:

‘4. With a view to minimising the disposal of WEEE as unsorted municipal waste and to facilitating its separate collection, Member States shall ensure that producers appropriately mark — preferably in accordance with the European standard EN 50419:2022 — EEE placed on the market with the symbol shown in Annex IX. In exceptional cases, where this is necessary because of the size or the function of the product, the symbol shall be printed on the packaging, on the instructions for use and on the warranty of the EEE.’;

(4) in Article 15, paragraph 2 is replaced by the following:

‘2. In order to enable the date upon which the EEE was placed on the market to be determined unequivocally, Member States shall ensure that a mark on the EEE specifies that the latter was placed on the market after 13 August 2005. Preferably, the European Standard EN 50419:2022 shall be applied for this purpose.

For photovoltaic panels, the obligation referred to in the first subparagraph shall only apply to photovoltaic panels placed on the market from 13 August 2012.

For EEE referred to in Article 2(1)(b) and which do not fall within the scope of Article 2(1)(a) the obligation referred to in the first subparagraph shall only apply to the EEE placed on the market from 15 August 2018.’

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [~~one year~~ **eighteen months** after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
