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NOTE

from : General Secretariat

to : Delegations

No. prev. doc. : 15599/09 ENV 776 MI 414 CODEC 1281

No. Cion prop. : 17367/08 ENV 1022 MI 554 CODEC 1863 - COM (2008) 810 final

Subject : Proposal for a Directive of the European Parliament and of the Council
on waste electrical and electronic equipment (WEEE) - (recast)

Delegations will find annexed comments from **DELETED**.

DELETED

Article 2 (scope):

In addition to the exclusion for fixed installations that **DELETED** has already suggested, **DELETED** proposes an explicit exclusion from the scope for photovoltaic panels in Article 2 para 3:

- (g) “Photovoltaic panels intended to be used in a system that is designed, assembled, and installed for permanent use at a predefined location to produce electricity for public, commercial or residential applications.”

Rationale:

The objective of the WEEE is to ensure a proper treatment of the waste stream of EEE. Since PV-Modules are already installed and uninstalled by professionals this objective is already achieved. Additionally the professional association PV-CYCLE prepares a voluntary environmental agreement on the take back and recycling of photovoltaic-modules at the moment. This voluntary environmental agreement will - according to the information of PV-CYCLE - be signed in December this year. Afterwards an adoption by the Commission as an environmental agreement according to the Communication of the Commission (COM 2002/412) is intended. Furthermore PV-modules make a significant contribution to achieve the renewable energy goals and the goal of reducing CO₂-emissions.

Article 3 (Definitions):

1. Add to the last sentence of (a):

“...dependant shall mean that the equipment needs electricity as its primary energy to fulfil its basic function”

Rationale:

Clarification, “dependent on electric currents... to work properly” seems to pose a multitude of problems. Equipment that works without electric currents should not fall within the scope of the directive only because an additional device is added, that needs electricity for its function. For that reason the FAQs of the Commission gave an interpretation of “dependant”, however this interpretation is legally not binding and does not lead to sufficient legal certainty. Therefore the explanation should be given in the legal text of the directive.

The text should read as follows:

“For the purposes of this Directive, the following definitions shall apply:

- (a) ‘electrical and electronic equipment’ or ‘EEE’ means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields [...] and designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current; **dependant shall mean that the equipment needs electricity as its primary energy to fulfil its basic function.**

2. In Article 3 (l) of the compromise text of the Presidency (15599/09) the last sentence should be added as follows:

- (l) “WEEE from private households” means WEEE which comes from private households and from commercial, industrial, institutional and other sources, which because of its nature and quantity, is similar to that from private households. Waste from EEE used by both private and other than private households shall be considered as WEEE from private households, **in this case Article 12 is applicable.**

Rationale:

Accordingly to the definition in Article 3 (l), dual use WEEE are also WEEE from private households. Therefore Article 12 regarding the financing in respect of WEEE from private households also applies to dual use WEEE. The proposed link to Article 12 for this reason clarifies, that for the dual use EEE, which occur in the same waste stream as EEE from private households, guarantees to finance the disposal have to be provided. Otherwise there would be a lack of financing to conduct the activities according to Article 12 para 1, if a producer fails to deliver.

3. Add under (t) a definition of fixed installations, taken from Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility:

- (t) **“fixed installation” means a particular combination of several types of apparatus and, where applicable, other devices, which are assembled, installed and intended to be used permanently at a predefined location.”**

DELETED

Article 2 (Scope):

DELETED proposes a new wording of Article 2 (e):

(e) Medical devices which are intended to be implanted or medical devices expected to be infected by blood or other biological contaminants prior to end-of-life.

Rationale:

Scope of this directive applies to electrical and electronic equipment listed in Annex IA (to EEE, not to WEEE). „Implanted or infected medical devices“ are considered as WEEE.

Article 3 (Definitions):

Article 3 (j):

DELETED proposes a new wording of Article 2 (j) and has a question concerning (iii):

- (i) manufactures electrical and electronic equipment under his own name or trademark, or has electrical and electronic equipment designed or manufactured and **places markets** that **electrical and** electronic equipment under his name or trademark **on the market** within the territory of a Member State,
- (ii) resells, under his name or trademark equipment **manufactured** produced by other suppliers, a reseller not being regarded as the „producer“ if the brand of the producer appears on the equipment, as provided for in subpoint (i), or
- (iii) places electrical and electronic equipment on a professional basis onto the market of a Member State.

Question:

According to the sub point (iii) that is connected to new definition of „placing on the market“ in Article 3 (p) producer shall be considered as a person who places an EEE onto the national market. A person who supplies EEE in the Member State where the purchaser of the equipment resides shall not be considered as producer? So (iii) does not cover transports to other Member States? Then Article 12 (4), Article 16 (1) and (2) second Para needs improvement.

Article 3 (q):

DELETED proposes a substitution of words „environmentally safe treatment“ in Article 2 (q) by words „treatment in environmentally sound way.

Article 3 (s):

Does this definition cover separate collection of WEEE „through other channels“, too?

Article 5 (Separate collection):

Add to the Article 5 (2) a new subpoint (x):

(x) when collecting WEEE through other channels, final holders shall be responsible for ensuring that such waste can be handed over to producers or third parties acting on their behalf free of charge or for the purposes of preparing for re-use, to appropriate establishments or undertakings.

Rationale:

In Article 7 (1a) and in Article 12 (1a) three sources of WEEE arise; in Article 5 (2) the existing 2 sources should be adjusted.

Article 7 (Collection rate):

Article 7 (3) 1. Para:

Delete a word „national“. It is obvious from the definition of „placing on the market“ in Article 3 (p).

Article 7 (4):

.....for cooling and freezing equipment and **fluorescent lamps containing mercury**, on the basis of a report

Rationale:

Text suggestion connected to Article 5 (1).

Article 12 and Article 16:

Article 12 (4), Article 16 (1) and (2) second Para are in contradiction with definition of producer in Article 3 (j) (iii).

Delete from the Article 16 (3) a word „national“. It is obvious from the definition of „placing on the market“ in Article 3 (p).

DELETED proposes a new wording of Article 16 (5):

(5) Member State shall collect information, including substantiated estimates, on an annual basis on the quantities and categories of electrical and electronic equipment placed on their market, **all WEEE separately collected** ~~collected through all routes,~~ re-used, recycled and recovered within the Member State, and on separately collected WEEE **transported outside the respective Member State, in particular** exported **out of the Community**, by weight.

Rationale:

Text suggestion connected to new definitions of „producer“ and „placing on the market“.
