



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 December 2010

**Interinstitutional File:
2008/0241 (COD)**

**17217/2/10
REV 2**

**ENV 824
MI 510
CODEC 1413**

REVISED NOTE

from : General Secretariat

to : Council

No. prev. doc. : 16482/10 ENV 783 MI 462 CODEC 1292

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)
- Progress report

I. INTRODUCTION

On 16 December 2008 the European Commission submitted to the European Parliament and the Council the proposal for a recast of Directive on waste electric and electronic equipment (WEEE). A proposed recast was necessary, according to the Commission, because experience with the first years of implementation of the WEEE Directive¹ had indicated technical, legal and administrative problems resulting in unnecessary administrative burdens, continuing environmental harm and low levels of innovation in the collection and treatment of the waste.

¹ Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) entered into force on 13 February 2003; the date of transposition was set on 13 August 2004.

In particular:

- to improve clarity on the products covered by the current WEEE Directive and their categorisation, the Commission proposes to move Annex IA and IB of Directive 2002/96/EC describing the scope for both the WEEE and RoHS Directives to the RoHS recast Directive, which is based on Article 95 of Treaty. The scope of the WEEE Directive, based on Article 175 of the EC Treaty, would refer to the scope of the RoHS Directive.
- to improve effectiveness in the separate collection of WEEE, a target collection rate of 65% WEEE (including business to business equipments(B2B)) is proposed, set in function of the average amount of EEE placed on the market in the two preceding years. This target reflects the amounts of WEEE which, according to the Commission, are currently already separately collected in the Member States. It takes into account the variations in EEE consumption in individual Member States. It should be achieved annually, starting in 2016. The possibility of transitional measures is foreseen as well as a re-examination of the target by the European Parliament and Council in 2012 on the basis of a proposal from the Commission.
- to encourage the preparation for re-use of whole WEEEs, it is proposed to include re-use of whole appliances in the increased (+5%) target for recycling. A recovery and recycling target for medical devices is also proposed.
- to reduce administrative costs and unnecessary administrative burdens for the producers, the Commission proposes to harmonize the national registration and reporting obligations for producers including making the registers inter-operational. This is accompanied by a new definition of producer at EU level.

The position of the European Parliament at first reading is not expected before February 2011.

On 21 October 2009, the Council held a policy debate on the basis of Presidency questions related to the scope of both the RoHS and the WEEE proposals where it was concluded that most delegations could agree on having separate scopes for the two Directives. As regards the suitability of the proposed "minimum list" approach in the WEEE Directive, diverging views were expressed, while all delegations and the Commission invoked the need to improve the legal clarity of the scope of both Directives.

The Working Party on the Environment (WPE) started to discuss the recast proposals in 2009 under the Czech, the Swedish and in 2010 under the Spanish Presidencies. During the Belgian Presidency, an agreement at first reading was reached with the EP on the RoHS proposal (in the process of being finalized), while discussions on the WEEE proposal took place on 19 July, 20 September, 11 October and 26 November 2010 in the Working Party. The state of play is summarized in Sections II to IV below.

Malta has a parliamentary scrutiny reservation on the proposal.

II. KEY OUTSTANDING ISSUES

1) Scope of the Directive - Article 2 paragraphs 2 and 3

a) WEEE included in the scope

Following the re-introduction in the Directive of the two Annexes related to the scope in 2009 (as in the Directive currently enforced), and the simplification of these Annexes, the Presidency presented a compromise text on the "open" scope, where all waste electric and electronic equipment would be covered by the Directive, the Annexes playing an indicative role in this context. A number of exclusions are foreseen, mostly aligned to the compromise text on RoHS².

² doc. 17187/10.

Twelve delegations support the Presidency compromise on the "open" scope while twelve other delegations do not agree with this proposal and prefer a "closed" scope, making reference to the list of WEEE contained in the Annexes of the proposal.

The Presidency has drawn the attention to the importance of an appropriate definition of "dependent" (possibly differing from the text in RoHS) as a key element paving the way for a possible compromise package on this issue (open scope/exclusions/definitions).

b) Exclusions

While most of the new exclusions in the Presidency compromise are aligned to the RoHS text, some differences with the RoHS are foreseen, notably as regards photo-voltaic panels. These would fall under the scope of the Directive.

The Presidency approach is generally supported by the delegations agreeing with the "open scope", while other delegations and the Commission note that in the case of a "closed" scope with a positive list in Annex some of the new exclusions would be unnecessary.

Most delegations are satisfied with the inclusion of photo-voltaic panels within the scope of the Directive.

2) Separate collection target

The proposal to set a target for separate collection of WEEE at 65% (total weight of WEEE collected in a given year expressed as a percentage of the average weight of EEE placed on the market on the three preceding years) to be achieved annually from 2016 was questioned by a majority of delegations.

The Presidency introduced as a compromise a stepwise approach to the separate collection of WEEE: a 45% target would be achieved after 4 years from the year of entry into force, and a 65% target would be achieved after 6 years of entry into force. While a majority of delegations can support this approach, several still consider that a longer time period to achieve the 65% target would be necessary.

3) Role and definition of producer

The Belgian Presidency continued work along the lines of the previous Presidencies who decided, at the request of all delegations, to re-introduce the current meaning of the definition of producer at *national* level in Article 3. Indeed, the definition of producer proposed by the Commission (at *EU* level) would entail important difficulties for Member States in the implementation of the Directive, notably with respect to the financial responsibility of the producer for the management of WEEE and the achievement of the collection and recovery targets. While the definition of producer, to which all delegations can agree in principle, is still subject of some debate as regards distant sellers and producers not established in the EU, the Commission has a reservation and maintains its original proposal.

4) Register of producers (Articles 16, 16a and 16b)

The inter-operational registers proposed by the Commission in Article 16 was criticised by all the delegations who raised a number of practical difficulties, in connection with the proposed definition of producers, as regards, in particular, the actual monitoring of producer's activities across the Member States, monitoring of the quantities of EEE placed on different national markets, and for the transfer of money related to intra-community transfers of products or WEEE.

The Belgian Presidency further developed the compromise texts aiming at tackling the need for greater harmonization of registration requirements for producers, notably by inserting a new Article 16a on the appointment of legal representatives in the case of producers selling by means of distance communication.

III. OTHER ISSUES

Annexes IA and IB on the scope: while a majority of delegations can accept to reduce the number of categories from 10 to 5, four delegations propose to add a separate category for medical devices (with separate targets for collection and recovery).

Methodology for calculating the collection rate: while many delegations consider preferable to calculate this rate on the basis of the total weight of WEEE collected in a given year expressed as a percentage of the average weight of EEE placed on the market in the three preceding years, one delegation is open to the notion of using "WEEE generated" as the basis for this calculation, as advocated by the European Parliament.

Recovery targets: pending an agreement on the scope and the Annexes (IA and IB) establishing the categories of products to be recovered, these targets are still a subject of debate, notably as regards the system of calculation to be used. In addition, four delegations have a reservation on the proposed 5% increase of these targets (Article 11).

Information for users: five delegations object to the provision allowing producers to show the cost for management of WEEE to purchasers (Article 14).

IV. AGREED PROVISIONS

There is a broad agreement on the provisions in Articles 1, 4, 8, 9, 10, 15, 19, 21, 22 (Articles 13 and 18 and Annexes II, III and IV are unchanged by the Recast).