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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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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)

Delegations will find attached document COM(2023) 63 final.

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EUROPEAN
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Brussels, 7.2.2023
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2023/0025 (COD)

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 25 January 2022, the Court of Justice of the European Union in its judgement in case C-181/20[1] declared as partially invalid Article 13(1) of Directive 2012/19/EU on waste electrical and electronic equipment ("WEEE Directive") by reason of non-justified retroactive effect, insofar as it provides for producers to have to assume the financing of the costs of collection, treatment, recovery and environmentally sound disposal of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012. The latter date is the entry into force of the then new WEEE Directive, which replaced Directive 2002/96/EC. From its entry into force, photovoltaic panels were added to the scope of the WEEE Directive. Furthermore, the 2012 Directive more broadly implemented an 'open scope' as of 15 August 2018, changing in this respect from the scope of the earlier Directive 2002/96/EC.

The Court argues that prior to the adoption of Directive 2012/19/EU, Member States had, pursuant to Article 14 of Directive 2008/98/EC on waste[2], 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 the distributor of the photovoltaic panels. According to the Court, the subsequently established rule, in Article 13(1) of Directive 2012/19/EU, under which the financing of costs related to the end-of- life treatment of photovoltaic panels other than for private households must in all Member States be borne by producers, including where products had already been placed on the market at a time when the former legislation was in force, must be regarded as applying retroactively. It is therefore liable to infringe the principle of legal certainty.

The judgement requires follow-up through a targeted amendment of the WEEE Directive and its Article 13(1) on financing the WEEE collection and treatment in respect of WEEE from users other than private households.

In addition, it was assessed that Article 12(1) of the WEEE Directive should also be amended as it contained a parallel provision for electrical and electronic equipment (EEE) for private households. While this Article was not explicitly targeted by the Court's judgement as not concerned by the underlying case, it can likewise be regarded as retroactive in the light of the Court's reasoning and therefore, a similar amendment is to be made.

The targeted Commission proposal also addresses the impact of the Court's judgment on other products falling under the 'open scope' set out in Article 2(1)(b) of the WEEE Directive as of 15 August 2018 with regard to which the situation is similar to the one of photovoltaic panels, explicitly targeted by the Court's judgement. In particular, the 'open scope' can include both EEE for private households and EEE for users other than private households[3]. For both cases,

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1 *OJ C 222, 6.7.2020*

2 *OJ L 312, 22.11.2008, p. 3–30*

3 Report from the Commission to the European Parliament and the Council on the review of the scope of Directive 2012/19/EU on WEEE Directive and on the re-examination of the deadlines for reaching the collection targets referred to in Article 7(1) of the new WEEE Directive and on the possibility of setting individual collection targets for one or more categories of electrical and electronic equipment in Annex III to the Directive (COM/2017/0171 final).

following the Court's judgement, clarification is needed that producers are obliged only from 15 August 2018 to finance the management of waste from 'open scope' EEE.

Consequently, the Commission proposal also covers an amendment of Article 12, paragraph 1. Amendment of Article 12, paragraphs 3 and 4 is proposed to clarify the time when the financing obligation for producers apply.

Likewise, to correct an otherwise retroactive effect based on the Court's reasoning, the Commission proposal furthermore aims to amend Article 15(2) referring to the marking of EEE.

In addition, this proposal updates in Articles 14(4) and 15(2) of the WEEE Directive the references to the European standard EN 50419 on marking of EEE in respect to separate collection of WEEE by replacing the reference to the 2006 version of this standard with the 2022 version.

- **Consistency with existing policy provisions in the policy area**

The current Union rules on the management of WEEE are laid down in Directive 2012/19/EU.

The proposal aims to amend Article 12, paragraphs 1, 3 and 4, Article 13(1) and Article 15(2) of the WEEE Directive as a follow-up to the judgement of the Court of Justice of the European Union in case C-181/20. These provisions concern the principle of extended producer responsibility (EPR), a key principle of the WEEE Directive already enshrined in the first Directive 2002/96/EC and implementing the polluter pays principle as enshrined in the Treaty on the Functioning of the European Union. The EPR principle is set out in more detail in Directive 2008/98/EC on waste (Waste Framework Directive or WFD). The proposal maintains the full effectiveness of the EPR provisions. However, in light of the Court's judgement, the principle of non-retroactivity and the related interests of economic actors have to be respected as regards the time when the WEEE Directive did not yet apply to photovoltaic panels and other products placed newly in its scope.

The proposal also aims at amending Article 14(4) and Article 15(2) in order to update the reference to the European standard EN 50419 by replacing the reference to the standard EN 50419, adopted by Cenelec in March 2006, with the revised version of this standard, which was adopted in 2022 and update the references in the standard to the WEEE Directive (EN 50419:2022).

These proposed targeted amendments do not relate to any other policy provision in the WEEE area.

- **Consistency with other Union policies**

The proposed targeted amendments maintain coherence of the Directive and its EPR provisions with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 192(1) of the Treaty on the Functioning of the European Union relating to environmental protection, which is the legal basis of the Act it amends.

- **Subsidiarity (for non-exclusive competence)**

As referred to in Recital (36) of Directive 2012/19/EU, since the objective of the Directive cannot be sufficiently achieved by the Member States and can by reason of the scale of the problem, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

Given that the targeted amendment aims to modify already existing provisions of the Directive in line with the Court's judgment, it can be concluded that the principle of subsidiarity and EU-added value are respected, as originally intended by the adoption of Directive 2012/19/EU. Moreover, given that there might be different interpretations by the Member States regarding the question of when the extended producer responsibility applies to photovoltaic panels and new in scope EEE, there is a necessity for the amendment.

- **Proportionality**

As indicated in Recital (36) of Directive 2012/19/EU, in accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, the WEEE Directive does not go beyond what is necessary in order to achieve its objective.

Given that the targeted amendment aims to modify already existing provisions of the Directive in line with the Court's judgment, it can be concluded that the principle of proportionality is respected, as originally intended by the adoption of Directive 2012/19/EU.

- **Choice of the instrument**

Given that the targeted amendment aims to modify already existing provisions of the WEEE Directive in line with the Court's judgment, this proposal takes the form of a Directive amending Directive 2012/19/EU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Member States' experts were informed of the implications of the Court's judgement in case C-181/20 and during a meeting of the Expert Group on waste on 7 April 2022 on the implementation of Directive 2012/19/EU on WEEE[4], where the Commission presented the main elements of the targeted amendment and asked for feedback. No objections to the proposed way ahead were raised, nor were any specific comments made.

Given that the Court's judgement requires the Commission to implement the judgment without undue delay and taking into consideration the limited nature of the proposal, there were no further stakeholder consultations.

[4] The agenda and the minutes of the meeting are available under the Register of Commission expert groups and other similar entities (europa.eu). See in particular agenda point 3.

- **Collection and use of expertise**

Given the clearly defined, limited scope of this proposal to address a judgement by the Court of Justice of the European Union, no external expertise was required to be relied upon.

- **Impact assessment**

No impact assessment was carried out given that there was no choice for the Commission but to amend specific articles of the WEEE Directive according to the judgment of the Court of Justice of the European Union in case C-181/20.

- **Regulatory fitness and simplification**

The initiative is limited to amending Article 12, paragraphs 1, 3 and 4, Article 13(1) and Article 15(2) of the WEEE Directive as a follow-up to the judgement of the Court of Justice of the European Union in case C-181/20 and to amend Article 14(4) and Article 15(2) in order to update the reference to the European standard EN 50419. Therefore, the proposal follows a strictly defined legal scope and format.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights. Given the judgement of the Court of Justice of the European Union in case C-181/20, follow-up has to be given through this targeted Commission proposal for the amendment of the WEEE Directive.

4. BUDGETARY IMPLICATIONS

The proposed measure does not envisage budgetary consequences for the European Commission. Consequently, a legislative financial statement is not provided.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Reporting arrangements are already provided for in Article 16 of the WEEE Directive, which is not affected by this targeted Commission proposal.

In addition, the rules for the calculation, verification and reporting of data for the purposes of the WEEE Directive are provided in Commission Implementing Decision (EU) 2019/2193 of 17 December 2019.

No additional measures or mechanisms are needed in relation to this proposal.

- **Explanatory documents (for directives)**

The Commission considers that documents explaining Member States' measures transposing the Directives are necessary in order to improve the quality of information on the transposition of the Directive.

The main objective of the proposed provisions is to ensure compliance with the Court of Justice of the European Union judgement and 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. Therefore, the complete and correct transposition of the new

legislation is essential to guarantee that this objective is achieved and there is a harmonised approach across Member States.

The requirement to provide explanatory documents may create an additional administrative burden on some Member States. However, explanatory documents are necessary to allow effective verification of complete and correct transposition, which is essential for the reasons mentioned above, and there are no less burdensome measures to allow efficient verification. Moreover, explanatory documents can contribute significantly to reducing the administrative burden of compliance monitoring by the Commission; without them, considerable resources and numerous contacts with national authorities would be required to track the methods of transposition in all Member States.

In view of the above, it is appropriate to ask Member States to accompany the notification of their transposition measures with one or more documents explaining the relationship between the provisions of the Directive amending the WEEE Directive and the corresponding parts of national transposition instruments.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 provides for the amendment of the following Articles of Directive 2012/19/EU on WEEE:

Article 12, paragraph (1):

The proposed amendment aims at clarifying the time from when producers of photovoltaic panels and of electrical and electronic equipment for private households that falls into the scope of the WEEE Directive only from 15 August 2018 ('open scope' EEE) have to provide for the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from private households. In particular, it clarifies that producers of photovoltaic panels for private households provide for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE resulting from photovoltaic panels where such photovoltaic panels were placed on the market from 13 August 2012.

It also lays down that producers of 'open scope' EEE for private households provide for financing regarding the abovementioned costs for the resulting WEEE where the EEE was placed on the market from 15 August 2018.

Article 12, paragraph (3):

This provision aims to delete from the text of the Directive the first part of the first sentence "For products placed on the market later than 13 August 2005" given that the reference to 13 August 2005 is obsolete as a consequence to putting into effect the Court's judgement.

Article 12, paragraph (4):

The proposed amendment clarifies that this paragraph refers only to WEEE from products referred to in Article 2(1)(a) of the WEEE Directive other than photovoltaic panels.

Article 13, paragraph (1):

The proposed amendment aims at clarifying from when producers of photovoltaic panels and of electrical and electronic equipment for users other than private households that falls into the scope of the WEEE Directive only from 15 August 2018 ('open scope' EEE) have to

provide for the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE.

In particular, it clarifies that producers of photovoltaic panels for users other than private households provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE resulting from photovoltaic panels where such photovoltaic panels were placed on the market from 13 August 2012.

It also clarifies that producers of 'open scope' EEE for users other than private households shall provide for financing regarding the abovementioned costs for WEEE resulting from such EEE where it was placed on the market from 15 August 2018.

Article 14(4):

This proposed amendment provides for an update as regards the reference in the WEEE Directive to the European standard EN 50419. Since this standard has been revised in 2022, the proposal is to replace the reference to the 2006 version of the standard with the updated version of 2022.

Article 15(2):

The proposed amendment comes as a consequential amendment from the amendments to Articles 12 and 13 to clarify that the obligation of producers to mark EEE applies only from 13 August 2012 in relation to photovoltaic panels and only from 15 August 2018 in relation to 'open scope' EEE. The proposed amendment also provides for an update as regards the reference to the European standard EN 50419, coherent with the change at this respect in Article 14(4).

Article 2 contains provisions regarding the transposition of the Directive by the Member States.

Article 3 contains provisions regarding the entry into force of the measure.

Article 4 defines the addressees of the measure, being the Member States.

2023/0025 (COD)

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 Committee[5],

Having regard to the opinion of the Committee of the Regions[6],

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.

(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-181/20[7], 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 waste[8], 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

5 OJ C , , p. .

6 OJ C , , p. .

7 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*

8 *OJ L 312, 22.11.2008, p. 3–30*

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.

(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.

(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 documents[9], 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.

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:

[9] OJ C 369, 17.12.2011, p. 14.

‘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’;

(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 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	*For the Council*
The President	*The President*