



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 May 2010

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

9887/10

LIMITE

**ENV 303
MI 156
CODEC 442**

NOTE

from : Presidency

to : Committee of the Permanent Representatives

Nos prev. docs : 8732/10 ENV 226 MI 107 CODEC 334 + ADD 1 + ADD 2 + ADD 3

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

Subject : **PREPARATION OF THE COUNCIL (ENVIRONMENT) MEETING ON
11 JUNE 2010**

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 Directive ¹ 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 B2B equipments) 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 in first reading is not expected before July 2010.

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 and the Swedish Presidencies. During the Spanish Presidency extensive discussions took place on 15 January, 23 February, 17 March, 14 and 26 April, and on 26 May 2010 where the latest Presidency text (9885/10) was discussed. 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 (IA and IB from the RoHS recast proposal), and the simplification of these Annexes:

Eleven delegations prefer to have an open scope, covering waste from all EEE, and consider that the Annexes should not play a role in defining the scope.

Thirteen delegations do not support an open scope and prefer the Presidency compromise on this point while the Commission maintains its proposal which defines the scope *via* a cross reference to the Annexes of the RoHS Recast proposal.

b) Exclusions

The Presidency has proposed new wording for some exclusions, correlated by definitions, in order to accommodate the requests of delegations notably in relation to large scale stationary industrial tools and large scale fixed industrial installations. While these proposals are generally welcomed, their precise wording is still being discussed, as well as additional suggestions for exclusions notably in relation to means of transport and photo-voltaic panels.

The Commission maintains its proposal and considers that means of transport and photovoltaic panels at present are excluded from the scope of the Directive because they do not figure in the categories of EEE listed in the Annex defining the scope.

2) Separate collection target

The proposed target for separate collection of WEEE set 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 is questioned by a great majority of delegations. In particular:

- Fourteen delegations find the collection target too ambitious and not sufficiently realistic. As an alternative, some delegations suggest to achieve this target gradually by, for example, reaching 35-50% in 2016 and 65% in 2020.
- Six delegations consider that the target should be referred to the EEE placed on the market for a longer period than 3 years (6 years are suggested).
- Two delegations consider that the target could differ for certain categories of WEEE and suggest several criteria to this end. Some delegations could support this approach although other delegations, the Presidency and the Commission consider that more time is needed for data gathering and proposes to come forward with possible collection targets for one or more WEEE categories by the end of 2012.

- Some delegations express reservations on the proposed procedure (examination procedure) for defining transitional arrangements. They consider that such provisions should be developed in co-decision.
- Finally, some delegations note that an agreement on the collection target is linked to clarifications of the role of the producer who, according to the Commission proposal, is responsible for achieving the target itself (see point 3 below).

3) Role and definition of producer

The Spanish Presidency continued work along the lines of the Swedish Presidency 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. Furthermore:

a) Financial responsibility and ownership of the waste (Articles 7 and 12)

While the principle of financial responsibility of the producer (from the collection point onwards) is already established in the current Directive, the coverage by the producers of all the costs occurring for collection facilities for WEEE from private households is encouraged in the Commission proposal.

While some remarks are still outstanding, much progress has been made in clarifying the practical difficulties raised by the proposal as regards the producer (who is financially responsible) and his obligations concerning the collection and recovery of the waste, the link between the producer and the different collection routes for WEEE (official channels and other "parallel" channels), the gathering of information on all the WEEE arising and finally avoidance of double payments for products transferred from a Member State to another Member State.

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

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 Spanish Presidency further developed the compromise texts in Articles 16 and Article 16a (new) on administrative cooperation and exchange of information, consistent with the definition of producers at national level on the one hand, and aiming at tackling the need for greater harmonization of requirements to producers in full respect of internal market rules on the other. While the Commission maintains its original proposal, a majority of delegations can support the Presidency's approach.

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), three delegations suggest to mention photo-voltaic panels in Annex 1B (examples of products falling within the categories of Annex IA) and three delegations ask to further clarify the situation in respect of certain large-scale equipment (used, for example, in schools, hospitals or in supermarkets).

Recovery targets: pending an agreement on the scope and the Annexes (IA and IB) establishing the product categories, the recovery targets are still subject to scrutiny by many delegations. Four delegations have a reservation on the proposed 5% increase of these targets (Article 11).

Information for users: seven 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 following provisions:

Articles: 1, 5, 6, 9, 10, 15, 19, 20, 21, 22 (Articles 13 and 18 and Annexes II, III and IV are unchanged by the Recast).