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NOTE

from: General Secretariat
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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 by **DELETED** on the text set out in 8163/10.

DELETED**Article 3 (Definitions)**

We should replace definitions (c) - (i), (m), (r) & (s) by a general reference to the definitions of the Waste Directive, as per Article 2 of Ground Water Directive 2006/118. Following the same logic, definition (b) could also be deleted if the last “clarifying” part (i.e. the phrase “including all components, subassemblies and consumables which are part of the product at the time of discarding”) is turned to a recital.

Article 3
Definitions

For the purposes of this Directive, the following definitions shall apply [in addition to those laid down in Article 3 of Directive 2008/98/EC](#):

- (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 volts for alternating current and 1500 volts for direct current;
- (aa) "dependent" means that the equipment needs electricity as its primary energy to fulfil its basic functions;
- (ab) "large scale stationary industrial tools" means a particular combination of several types of apparatus and, where applicable, other devices, which are intended to be used permanently in an industrial pre-defined location and each of which are designed for use in an industrial environment only. It shall exclude EEE which may, during the lifespan of the tool concerned, be replaced from time to time;
- ~~(b) 'waste electrical and electronic equipment' or 'WEEE' means electrical or electronic equipment which is waste within the meaning of Article 3(1) of Directive 2008/98/EC on waste, including all components, subassemblies and consumables which are part of the product at the time of discarding;~~
- ~~(c) 'prevention' means prevention within the meaning of Article 3(12) of Directive 2008/98/EC on waste;~~
- ~~(d) 're-use' means re-use within the meaning of Article 3(13) of Directive 2008/98/EC on waste;~~
- ~~(e) 'preparing for re-use' means preparing for re-use within the meaning of Article 3(16) of Directive 2008/98/EC on waste;~~
- ~~(f) 'recycling' means recycling within the meaning of Article 3(17) of Directive 2008/98/EC on waste;~~
- ~~(g) 'recovery' means recovery within the meaning of Article 3(15) of Directive 2008/98/EC on waste;~~
- ~~(h) 'disposal' means disposal within the meaning of Article 3(19) of Directive 2008/98/EC on waste;~~
- ~~(i) 'treatment' means treatment within the meaning of Article 3(14) of Directive 2008/98/EC on waste;~~

- (j) 'producer' means any natural or legal person in a Member State who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts:
- (i) manufactures electrical and electronic equipment under his own name or trademark, or has electrical and electronic equipment designed or manufactured and markets that electronic equipment under his name or trade mark within the territory of that Member State;
 - (ii) resells under his own name or trademark equipment 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 that Member State.
- Producers selling by means of distance communication shall appoint a natural or legal person established in the Member State where the EEE is sold as the person to fulfil his obligations as producer in that Member State. This natural or legal person shall be considered his distance seller representative.
- Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a 'producer' unless he also acts as a producer within the meaning of subpoints (i) to (iii);
- (k) 'distributor' means any natural or legal person in the supply chain, who makes an electrical and electronic equipment available on the market;
- (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 in any case be considered as WEEE from private households;
- ~~(m) 'hazardous waste' means hazardous waste within the meaning of Art. 3 (2) of Directive 2008/98/EC on waste;~~
- (n) 'finance agreement' means any loan, lease, hiring or deferred sale agreement or arrangement relating to any equipment whether or not the terms of that agreement or arrangement or any collateral agreement or arrangement provide that a transfer of ownership of that equipment will or may take place;
- (o) 'making available on the market' means any supply of a product for distribution, consumption or use on the market of a Member State in the course of a commercial activity, whether in return for payment or free of charge;
- (p) 'placing on the market' means the first making available of a product on the market within the territory of a Member State on a professional basis;
- (q) 'remove' means manual, mechanical, chemical or metallurgic handling with the result that hazardous substances, preparations and components are contained as an identifiable stream or identifiable part of a stream. A substance, preparation or component is identifiable if it can be monitored to prove environmentally safe treatment;
- ~~(r) 'collection' means collection within the meaning of Article 3 (10) of Directive 2008/98/EC on waste;~~
- ~~(s) 'separate collection' means separate collection within the meaning of Article 3 (11) of Directive 2008/98/EC on waste.~~
- (sa) 'medical device' means the electrical equipment within the scope of Directive 93/42/EEC and Directive 98/79/EC.

Article 5 (Separate collection)

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2. For WEEE from private households, Member States shall ensure that:
- (a) **producers or third parties acting on their behalf provide for the collection of such waste by setting up and operating individual and/or collective take-back systems.** ~~systems are set up~~ allowing final holders and distributors to return such waste at least free of charge. ~~Member States shall ensure~~ The availability and accessibility of the necessary collection facilities **shall be guaranteed**, taking into account in particular the population density;
 - (b) when supplying a new product, distributors shall be responsible for ensuring that such waste can be returned to the distributor at least free of charge on a one-to-one basis as long as the equipment is of equivalent type and has fulfilled the same functions as the supplied equipment. Member States may depart from this provision provided they ensure that returning the WEEE is not thereby made more difficult for the final holder and provided that these systems remain free of charge for the final holder. Member States making use of this provision shall inform the Commission thereof;
 - (c) ~~without prejudice to the provisions of (a) and (b), producers are allowed to set up and operate individual and/or collective take-back systems for WEEE from private households provided that these are in line with the objectives of this Directive;~~
 - ~~(d)~~ having regard to national and Community health and safety standards, WEEE that presents a health and safety risk to personnel because of contamination may be refused for return under (a) and (b). Member States shall make specific arrangements for such WEEE.

Member States may provide for specific arrangements for the return of WEEE as under (a) and (b) if the equipment does not contain the essential components or if the equipment contains waste other than WEEE.

3. In the case of WEEE other than WEEE from private households, and without prejudice to Article 13, Member States shall ensure that producers or third parties acting on their behalf provide for the collection of such waste.

Justification: The proposed changes clarify that the producers (or third parties acting on their behalf) have to set up collection systems. Otherwise, the text is unclear, confusing and (par. 5.2.c) contradicts the provisions of Art. 12.1.

Article 7 (Collection rate)

Deletion of par. 3.

Justification: We call upon the principles of subsidiarity, better regulation and common sense. We do not see the need for a common methodology for the calculation of the total weight of EEE placed on the national market. We would welcome guidelines issued by the Cion on this issue but a common methodology just adds unnecessary bureaucracy and complications with no much added value.

Article 8 (Treatment)

We are concerned about the reference to “best available techniques” in **par. 3**, since there are no available BREFs for WEEE treatment facilities. So far, we haven’t received any additional information by Cion to explain the practical meaning of this reference. Thus we propose either the deletion of this reference or to add “, as appropriate”.

Also in the same par.3, we propose the deletion of the term producer because it may also be a third party acting on behalf of producers.

- 3. Member States shall ensure that producers or third parties acting on their behalf set up systems to provide for the recovery of WEEE ~~using best available techniques~~. The systems may be set up by producers individually or collectively. Member States shall ensure that any establishment or undertaking carrying out collection or treatment operations stores and treats WEEE in compliance with the technical requirements set out in Annex III.

Article 12 (Financing in respect of WEEE from private households)

1. **For products placed on the market later than 13 August 2005**, Member States shall ensure that producers provide at least for the financing of the **management** ~~collection, treatment, recovery and environmentally sound disposal~~ of WEEE from private households deposited at collection facilities set up under Article 5(2).
 - ~~1a. Member States, where appropriate, may encourage producers to finance also the cost occurring for collection facilities for WEEE from private households to collection facilities.~~
 - ~~1b. In case producers also finance the cost occurring for collection of WEEE from private households, Member States shall ensure that the WEEE deposited at collection facilities as referred to in Article 5 paragraph 2(a) and to distributors as referred to in Article 5 paragraph 2(b), as well as separately collected by other operators, are 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.~~
- ~~2. For products placed on the market later than 13 August 2005, each producer shall be responsible for financing the operations referred to in paragraph 1 relating to the waste from his own products. The producer can choose to fulfil this obligation either individually or by joining a collective scheme. Member States shall ensure that each producer provides a guarantee when placing a product on the market showing that the management of all WEEE will be financed and that producers clearly mark their products in accordance with Article 15 (2). This guarantee shall ensure that the operations referred to in paragraph 1 relating to this product will be financed. The guarantee may take the form of participation by the producer in appropriate schemes for the financing of the management of WEEE, a recycling insurance or a blocked bank account.~~
- ~~3.~~ 2. The responsibility for the financing of the costs of the management of WEEE from products placed on the market before 13 August 2005 ("historical waste") shall be provided 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.

Justification: Merging par.1 and 2 to make the text shorter and clearer. The term “management” is used to include also transport, as per Waste Directive 2008/98. It is also in line with the provision of par. 2 and 3 where the term “management” is used. The cost of transport can be very high (more than 1000€ per ton in the case of **DELETED**). For **DELETED**, it is necessary for the producers to cover the cost of transport in full. This is the highest cost. If it is not covered by the producers who is going to pay for it? Deletion of the last part of par.1 and all par. 1a is proposed for simplicity and clarity (it is unclear what “free of charge” really means, i.e. the recycling plants will not pay or the producer will not pay a gate fee to the recycler?). The apparent exclusion of the collection cost sets a new precedent since, until now, in all relevant EU Directives where the “extended producer’s responsibility” principle was applied (Art. 8 of Waste Directive) the collection cost was covered by the producers (packaging directive is the typical example). The text creates unnecessary confusion. Regarding the 2nd subparagraph of par. 2, we are wondering if there are any MSs that have applied this provision. If not, we should delete it as it does not seem to be in conformity with the approach that we generally followed when we applied the “extended producer responsibility” principle.

Article 13 (Financing in respect of WEEE from users other than private households)

1. Member States shall ensure that the financing of the costs for the **management** ~~collection, treatment, recovery and environmentally sound disposal~~ of WEEE from users other than private households from products placed on the market after 13 August 2005 is to be provided for by producers.

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Justification: As per Art.12.

Article 19 (Penalties)

We would like to add the following recital, as per recital 45 of Waste Directive 2008/98:

Member States should provide for effective, proportionate and dissuasive penalties to be imposed on natural and legal persons responsible for WEEE management, which carry out waste treatment operations and waste management schemes, in cases where they infringe the provisions of this Directive. Member States may also take action to recover the costs of non-compliance and remedial measures, without prejudice to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

ANNEX 1c

We consider that reference to the minimum requirements for shipments of suspected WEEE, is an issue that needs to be addressed within the WSR. Note that

- (a) suspected waste, are waste according to the WSR.
- (b) fully functional EEE destined for disposal are waste.
- (b) old or out-dated EEE destined for cannibalization, are WEEE according to the Revised correspondents’ guidelines no1

In this directive, or in the relevant process of the WFD, distinguishing between waste and non-waste in the case of used electrical and electronic equipment should be addressed (what is the appropriate procedure can be decided) . This decision relates not only to transport but to storage, as well, as both fall under the term ‘waste management’.

Compared to the Revised correspondents’ guidelines no1, where the approach is detailed and extensive, containing useful examples and has a working approach, with a view towards enforcement. The enforceability of the proposed text, is questionable, as for example, does not cover the case of faulty non-functional equipment being transported to be repaired, which are not WEEE.

We propose that the annex is deleted, or drastically amended to refer to “Distinguishing between used EEE and WEEE, destined for repair and/or resale”.

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Position regarding medical devices (Article 2(3)(e) and Article 3 (sa))

As requested during the Working Party of 17-03-2010 on WEEE we hereby provide the Presidency with our comments to the Article 2(3)(e) and to the Article 3 (sa) in writing.

Article 2(3)(e)

Text proposal for an exclusion of medical devices from the scope:

(e) Active implantable medical devices which are expected to be infected prior to end of life.

Article 3 (sa)

Text proposal for a definition of “active implantable medical device”:

(sa) “active implantable medical device” means any active implantable medical device within the meaning of point (c) of Article 1 (2) of Directive 90/385/EEC;

Justification:

I. Existing definition of „active implantable medical device“ within the meaning of point (c) of Article 1 (2) of Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices provides greater legal clarity:

“(c) ‘active implantable medical device’ means any active medical device which is intended to be totally or partially introduced, surgically or medically, into the human body or by medical intervention into a natural orifice, and which is intended to remain after the procedure;”

Examples of types of active implantable medical devices which are covered by Directive 90/385/EEC according to the Guidelines of the European Commission, DG Enterprise, Directorate G, Unit 4 relating to the application of the Council Directive 90/385/EEC on active implantable medical devices and the Council Directive 93/42/EEC on medical devices from 26 April 1994 are as follows:

1. implantable cardiac pacemakers
2. implantable defibrillators
3. leads, electrodes, adaptors for 1. and 2.
4. implantable nerve stimulators
5. bladder stimulators
6. sphincter stimulators
7. diaphragm stimulators
8. cochlear implants
9. implantable active drug administration device
10. catheters, sensors for 9.
11. implantable active monitoring devices
12. programmers, software, transmitters.

II. Text proposal for an exclusion of medical devices from the scope proposal provides clarity that if certain active implantable medical devices are removed from a natural orifice and are infected (which they admittedly will be), they will not fall within the requirements of WEEE.

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PROPOSALS ON EXCLUSION FROM SCOPE AND DEFINITIONS

At the RoHS CWG meeting of 19 March, **DELETED** submitted a paper commenting on document 5788/10. We said that in the case of Council deciding upon an “open scope” route, we would expect to see certain broad exclusions. We also argued that some of these exclusions were necessary whether or not we move to an open scope. **DELETED** took an action from that meeting to follow up with proposed wording on exclusions from scope and associated definitions. **These proposals may now be considered in the context of the latest Presidency text of 6 April 8164/10 (RoHS). Given the overriding need to maintain consistency between RoHS and WEEE, we also consider that they should be considered in the context of the Presidency text 8163/10 (WEEE).**

Suggested changes to Article 2.3 - Exclusions

This Directive does not apply to:-

- (X) Fixed Installations
- (XX) Large-scale Stationary Industrial Tools
- (XXX) Means of transport of goods or persons
- (XXXX) Equipment within the scope of the non-road mobile machinery exhaust emissions Directive 97/68/EC

Article 3 - Definitions

3 (a) Definition of “EEE” **DELETED** believes that the wording proposed by the Commission (and repeated in Presidency text) should be modified to include “dependent” in the definition as follows:-

“electrical and electronic equipment ‘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 volts for alternating current and 1500 volts for direct current”. ***“Dependent” shall mean that the equipment needs electricity as its main energy source to fulfill its basic function.***

Rationale

Equipment that works without electric currents should not fall within the scope of the Directive simply as a consequence of an additional device being added that needs electricity in order to function. For that reason the Commission’s FAQs gave an interpretation of “dependent”. This is an opportunity to make that interpretation legally binding and provide economic operators with sufficient legal certainty.

Other definitions

‘**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.

Comment: we believe that this exemption is necessary for the reasons given below but we also accept that it should not extend to cover equipment placed on the market separately which is clearly within scope eg computer monitors.

“**large-scale stationary industrial tool**” means an assembly of machines, equipment, and/or components, functioning together for a specific application, permanently or semi-permanently installed by professionals at a given place, and used and maintained by professionals in an industrial manufacturing facility or research and development facility.

Comment: An example might be highly specialised equipment, procured from a global supply chain, which must operate at the highest reliability, used in the production of for example semiconductors, vehicles or other products. We believe this particular definition is more precise in terms of specifying industrial and R&D location and professional treatment.

Rationale for these four broad exclusions

These items are installed, dismantled and treated by professionals and rarely, if ever, appear in the municipal waste stream. It should not be forgotten that the RoHS Directive was designed to reduce, and over time phase out, substances that are harmful to the environment when they enter landfill. The inclusion in scope of these four categories would deliver a very small (if any) environmental improvement against disproportionately high economic costs. We also believe that if the Directive is applied to some LSIT, there could be considerable repercussions on EU competitiveness and employment in many areas.

We understand that many Member States wish to restrict the extent of these exemptions because they believe that doing so will produce a greater level of environmental protection. However without a full Impact Assessment, that can only be supposition. If an Impact Assessment is undertaken, we could equally find that the environmental impact is minimal, that confusion within industry is increased and that the costs to business are disproportionate. This could result in severe damage to the competitiveness of EU industry. At this time, more than any other, we cannot afford that to happen.