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THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) (Recast)

- Statement of the Council's reasons

Adopted by the Council on 19 July 2011

I. INTRODUCTION

The Commission submitted its proposal to the Council on 16 December 2008. The proposal is based on Article 192 TFEU (ex Article 175 EC).

The Economic and Social Committee adopted its opinion on 11 June 2009. The Committee of the Regions adopted its opinion on 4 December 2009.

The European Parliament voted its position in first reading on 3 February 2011.

The Council adopted its position at first reading on 19 July 2011.

II. OBJECTIVE

The proposal aims at:

- improving clarity on the products covered by the current WEEE Directive¹ and simplifying administrative procedures,
- increase effectiveness in the separate collection of WEEE, with a target collection rate set in function of the average amount of EEE placed on the national market in the three preceding years,
- encouraging the preparation for re-use of whole WEEE, by raising (+5%) the target for recycling,
- contributing to the fight against illegal shipments by setting the conditions applicable to shipments of used EEE suspected to be WEEE.

¹ Directive 2002/96/EC on waste electrical and electronic equipment (WEEE).

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

1. General

The European Parliament adopted 86 amendments to the Commission proposal. 33 are acceptable to the Council, which has included them in its position at first reading (wholly, in part, or in principle).

The Council did not accept the other amendments because they were not consistent with other parts of its position at first reading.

The Council's position at first reading also includes a number of changes other than those envisaged in the European Parliament's position. Section 4 below describes the principal changes of substance. In addition, drafting changes were made to clarify the text and to ensure the overall coherence of the proposal.

The Commission indicated that it can not accept the Council's position in first reading.

2. EP amendments included in the Council's position at first reading

The Council's position at first reading incorporates amendments 2, 94, 12, 13, 14, 15, 16, 18, 98, 20, 21, 24, 27, 29, 99, 102, 36, 37, 44, 45, 57, 62, 65, 66, 68, 78, 97, 80, 82, 81, 83, 86, 88 either fully or partly, or text with the same or partly the same objective.

However:

Before entry into force of the open scope, a 6 years delay is foreseen (Article 2). This transitional period allows for a review of the open scope to be carried out by the Commission, and for a legislative proposal to be presented if necessary. In the transitional period, the scope of the Directive will remain similar to that of the Directive currently enforced (Annexes I and II), with the exception of photovoltaic panels.

In parallel to the open scope, a number of new exclusions are foreseen. These are correlated, where necessary, with new definitions in Article 3 of the Directive. (Amendments 2, 12, 13, 14, 15, 16, 98, 20, 21, 78, 97 related to the scope).

The encouragement of eco-design for EEE is spelled out in Article 4 while the need to develop further eco-design requirements in the framework of Directive 2009/125/EC is spelled out in Recital 10 (Amendment 24). The development of standards for the treatment of WEEE is addressed in Article 8 with the inclusion of a reference to the Waste Framework Directive (Amendment 99). As regards Annex II, amendments can be adopted by means of delegated acts although a specific reference to nanomaterials is not foreseen (Amendment 102).

Requirements for shipments, monitoring and inspection of used EEE are laid down in Article 23 and Annex VI (Amendment 36).

3. EP amendments not included in the Council's position at first reading

Amendments 1, 3, 4, 101, 5, 6, 7, 9, 10, 11, 22, 23, 25, 26, 28, 95, 31, 32, 35, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 50, 51, 52, 92 and 100, 54, 55, 56, 58, 59, 60, 61, 96, 64, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77 were not included for the following reasons:

Amendments 1 and 5: provisions on standards and on preparing for re-use, recycling and recovery are addressed in Articles 8 and 11 respectively, without modification of the recitals but along the lines expressed by these amendments.

Amendments 3, 4, 6, 9, 11 on the role and responsibility of the different actors involved, from producers and distributors, to consumers, municipalities and recyclers, are addressing concerns that are shared in part and in principle by the Council. However, the Council maintains that the primary responsibility for treatment should lie firmly on the producers and does not consider that consumers should, by means of the Directive, ensure that end of life EEE is taken to the collection facilities (Amendment 6). As regards the role of distributors placing an EEE on the market of a Member State for the first time (intra-union trade, Amendment 9), the Council believes that it is more appropriate to consider such distributors as producers. It has modified the definition of "producer" in Article 3(1)(f) accordingly, to take account of this and other difficulties faced by Member States in ensuring practical enforcement of the Directive. The avoidance of multiple fees and the possible appointment of a legal representative are addressed in Articles 12(5) and 17 respectively.

Amendment 101 because specific risks, including from nanomaterials, can be addressed by the Commission in the framework of Article 8 and any amendments to Annex VII on selective treatment for materials and components of WEEE.

Amendment 7 and Amendments 47, 48, 49, 50, 51, 52, 92 and 100, 54, 55: the Council could not agree to modify the existing practices on financing and on information for users, foreseen in Articles 12 and 14 of the proposal, and opted to keep these Articles mostly as currently enforced, supporting the Commission on this point.

Amendment 10 on delegated acts has been taken up in part as regards alignment to the Lisbon Treaty and adaptation of Annexes IV, and VII to IX, to scientific and technical progress.

Amendment 22 defining "means of transport" considering that the exclusion in Article 2 (4)(d) is sufficiently clear and Amendment 23 defining "photovoltaic modules" considering that Annexes I to IV foresee that all types of photovoltaic panels will fall within the scope of the Directive. The Council does not find that the proposed exclusion of photovoltaic modules is justified at present.

Amendments 25 and 32 are taken up as regards the mention of mercury containing lamps as priority WEEE for separate collection while the obligation to separately collect all WEEE is too ambitious at this stage. Furthermore, the Council does not agree with the mention of small appliances nor of filament bulbs, the latter being excluded from the Directive.

Similarly on Amendment 28, the Council considers the proposed rate of separate collection unfeasible, and considers that the choice of setting of the target in relation to the WEEE arising (instead of the amount of EEE placed on the market) would not be sufficiently knowledge-based. In addition, it supports the Commission proposal which establishes that producers should be responsible for the achievement of the target. The Council agrees that it is necessary to maintain the present minimum collection target for a transitional period. Finally, while it is clear that more ambitious targets can be set at national level, it is not necessary to present an improvement plan to the Commission to this end.

As regards Amendments 95 and 31 on delegated acts, the Council does not consider appropriate to limit in time further transitional arrangements nor that these should be adopted by means of delegated acts. Similarly, it considers that a common methodology for the calculation of the total weight of EEE placed on the market, to ensure uniform conditions of implementation, should be established by implementing acts.

Amendment 26 because provisions on inspection and monitoring relating to the Directive as a whole are addressed in Article 23.

Amendment 35 adding provisions on shipments, because the common position makes reference to the complete legal framework applicable at EU level on the shipment of waste. The rules foresee, among others, a shipment notification and prior consent procedure and certification that the recovery operation has been completed. Certification should be contained in, or annexed to, the movement document and returned to the notifier and the competent authorities concerned before release of the financial guarantee can take place. Shipments outside the EU should take place only if the notifier or the competent authority in the country of destination can demonstrate that the facility receiving the waste is operated in accordance with human health and environmental protection standards that are equivalent to the conditions established in EU legislation.

Amendment 38 on delegated acts in Article 10(3) for supplementing Article 10(2) because a deadline for adopting such acts is not considered appropriate.

Amendments 39, 40, 41, 42, 43: considering that implementing a separate target for preparing for re-use would not be feasible at this stage, the Council maintained a single target for preparing for re-use and for recycling of WEEE as proposed by the Commission.

Amendment 46: record keeping of the mass of used EEE and of WEEE materials and components leaving the recovery or recycling facilities was not considered immediately necessary for the purposes of target implementation. However, in Article 11(6) a review clause is added in order to re-examine in due time the recovery targets and the calculation methods with a view to analyse the feasibility to refer the targets to products and materials resulting (output) from the recovery, recycling and preparation for re-use processes.

Amendment 56: whilst "preparation for" re-use has been added, the terms "re-use" and "use" should be connected with products (to be consistent with the Framework Directive on waste).

Amendments 58, 59, 60, 61 on the register for producers are partially taken up in Article 16 (addition of Annex X setting out the information necessary for producer' registration and reporting), Article 17 whereby legal representatives may be foreseen by Member States in case of distance sellers and Article 18 on administrative cooperation and exchange of information.

Amendment 96 deleting Article 21 on the Committee, considering that a number of measures to ensure uniform conditions of implementation of the Directive should be adopted, given their nature, as implementing measures. This is the case for Amendment 69 on Article 23 (inspection and monitoring).

As regards Amendment 64 (exercise of the delegation) taken up in part, the Council does not consider that the delegation of powers to the Commission should be unlimited in time and indicates, instead, a renewable period of five year.

Amendment 67 because it is covered by Articles 16(1) and 23(1).

Amendments 70 and 71, covered by Articles 5 (on collection) and 9 (on permits for treatment operations); Amendments 72 and 73 being addressed in Articles 7(2) and 11(4), 16(4) and Amendment 74 being addressed in Article 5, keeping in mind that the provision of the Waste Framework Directive (on permits, registration and record keeping among others) are applicable.

Amendment 75 on Article 24 considering that the mention of specific Articles to be transposed has been replaced by a reference to the Directive as a whole.

Amendment 76 on reporting, considering that the Council has opted for a simplified approach, where the reviews are foreseen after 3 years (in Articles 2 and 7) and after 7 years (in Articles 7 and 11) from entry into force. Experience with the implementation of the Directive will be available to the Commission, covering, after 7 years, two reporting periods.

Amendment 77 on Article 25 whose practical need is unclear.

4. Other changes included in the Council's position at first reading

Other changes of substance compared to the Commission's initial proposal concern principally:

a) Article 2 (scope)

An exclusion to the open scope has been inserted for "equipment specifically designed solely for the purposes of research and development only made available on a business to business basis", similar to the exclusion foreseen in the framework of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS).

b) Article 7 (collection rate)

The Commission proposal for a 65% minimum collection rate to be achieved in 2016 was not considered achievable within the given timeframe, given the present rates of separate collection. The Council has therefore opted for a two-step approach foreseeing a 45% rate to be achieved after 4 years from entry into force of the Directive, increasing to a 65% collection rate after a further 4 year period.

While transitional arrangement were already foreseen in Article 7(2) of the Commission proposal, the Council has inserted in the common position a temporary derogation to address particular difficulties in reaching the collection target in a limited number of Member States.

c) Article 11 (recovery targets)

Given the need to foresee a realistic transition period before reaching the new targets and the need for further adaptation following entry into force of the open scope (implying a change from 10 to 5 categories), the targets are spelled out in a new Annex V. In addition, in order to establish uniform conditions for implementation, additional rules on the calculation methods for the application of the minimum targets are foreseen in Article 11(2).

d) Article 23 (inspection and monitoring) and Annex VI on minimum requirements for shipments of used EEE suspected to be WEEE

Provisions as regards the shipment of used EEE suspected to be WEEE are refined to require, in particular, shipments of EEE sent to the producer or third parties acting on their behalf to take place in the framework of a business-to business transfer agreement. In addition, shipments of used EEE for professional use are allowed to be sent for refurbishment or repair under a valid after-sales service maintenance contract and shipments of defective used EEE for professional use are allowed to be sent for root cause analysis under a valid after-sales service maintenance contract, in case such analysis can only be conducted by the producer or third parties acting on their behalf.

e) Article 24 (transposition)

The proposed addition of a reference to the correlation table in paragraph 1 has been deleted.

IV. CONCLUSION

The Council believes that its position at first reading represents a balanced package. It looks forward to constructive discussions with the European Parliament at second reading with a view to the early adoption of the proposed Directive.