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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 April 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Opinion of the Commission pursuant to Article 294(7)(c) of the Treaty on the
Functioning of the European Union, on the European Parliament's
amendment[s] to the Council's position regarding the proposal for a Directive
of the European Parliament and of the Council on waste electrical and
electronic equipment (WEEE)

Delegations will find attached Commission document COM(2012) 139 final.

Encl.: COM(2012) 139 final



EUROPEAN COMMISSION

Brussels, 11.4.2012
COM(2012) 139 final

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OPINION OF THE COMMISSION

**pursuant to Article 294(7)(c) of the Treaty on the Functioning of the European Union,
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to the Council's position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

on waste electrical and electronic equipment (WEEE)

(Text with EEA relevance)

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1. INTRODUCTION

Article 294(7)(c) of the Treaty on the Functioning of the European Union provides that the Commission is to deliver an opinion on the amendment proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendment proposed by the Parliament.

2. BACKGROUND

On 03 December 2008 the Commission adopted a proposal for a Directive on waste electrical and electronic equipment (WEEE).

The Economic and Social Committee gave its opinion on 11 June 2009. The Committee of the Regions adopted its opinion on 04 December 2009.

The European Parliament adopted its first reading position on 03 February 2011.

The Council reached a political agreement on the proposal on 14 March 2011 and adopted its common position on 19 July 2011.

The European Parliament adopted its position in second reading on 19 January 2012.

During the plenary debate of 18 January 2012, the Commission made declarations in order to clarify certain positions and intentions of the Commission, with a view to facilitate an agreement in second reading.

3. OBJECTIVE OF THE COMMISSION PROPOSAL

Specific objectives of the WEEE recast proposal (2008) were to increase resource efficiency and ensure proper treatment of e-waste by setting new collection targets adapted to the reality of each Member State. Further objectives were to reduce unnecessary administrative burdens, and to ensure better implementation, especially by reversing the burden of proof on exports of used equipment suspected to be WEEE.

4. COMMISSION COMMENTS

At its Plenary Session of 19 January 2012, the European Parliament adopted a compromise package which had been agreed with the Council in view of reaching a second reading agreement.

The amendment containing this compromise package concerns essentially:

- the establishment of new collection targets per Member State seven years after entry into force, with an intermediate target four years after entry into force;
- the take-back of small WEEE at large retail shops unless alternative schemes can be shown to be at least as effective;
- the widening of the scope to include all electrical and electronic equipment, six years after entry into force, with additional exemptions, and after a review to be carried out by the Commission;
- the harmonisation of registration and reporting requirements, while acknowledging that these requirements are in principle national to allow for effective enforcement;
- the introduction of minimum requirements for shipments of used equipment which are suspected to be illegal waste shipments, including reversal of the burden of proof, and specific derogations.

The Commission accepts the compromise package as it is in line with the overall purpose and the general characteristics of the proposal.

The Commission underlines that the minimum requirements for shipments should not hinder the legal trade of used equipment. Where there is a suspicion that the shipment is de facto an illegal shipment of waste, Annex VI gives Member States the legal instrument to clarify the situation.

5. CONCLUSION

The Commission accepts the amendment adopted by the European Parliament in second reading according to the above described compromise text of the Council and the European Parliament. The Commission adopts the declarations laid down in the annex.

ANNEX: COMMISSION DECLARATIONS

**DECLARATION ON PRODUCT-DESIGN
(WEEE ARTICLE 4)**

Eco-design measures can help to facilitate meeting the targets of the Directive on waste electrical and electronic equipment in line with the Roadmap on Resource Efficiency (COM(2011)571). The Commission will, if and when introducing new or reviewing the implementing measures adopted pursuant to Directive 2009/125/EC on products also covered by the WEEE Directive, take into account the parameters for re-use and recycling as set out in Annex 1 part 1 of the Directive 2009/125/EC, and assess the feasibility of introducing requirements on re-usability, easy dismantling and recyclability of such products.

**DECLARATION ON SPECIFIC DEROGATIONS FROM THE COLLECTION TARGETS
(WEEE ARTICLE 7)**

The new WEEE Directive in Article 7(4) creates the possibility for transitional arrangements in order to address difficulties faced by a Member State in meeting the collection targets of that Article, as a result of specific circumstances. The Commission underlines that high collection targets of WEEE are important for a resource-efficient Europe and that the transitional arrangements can only be applied in exceptional circumstances. The difficulties faced and the specific circumstances on which they are based must be objective, well documented, and verifiable.

**DECLARATION ON NANOMATERIALS
(WEEE ARTICLE 8 AND ANNEX VII)**

The European Parliament and the Council have agreed to invite the Commission to evaluate whether specific treatment may be necessary to address nanomaterials contained in EEE. In this context the Commission understands nanomaterials to be those falling under the definition set out in the Commission Recommendation 696/2011. Potential risks posed by such nanomaterials would be identified with tools available under the appropriate legislation for this purpose. Where specific nanomaterials have been shown to pose risks to human health or the environment, the Commission will assess whether specific treatment may be necessary and amend Annex VII as appropriate.

**DECLARATION CONCERNING THE USE OF IMPLEMENTING ACTS
(WEEE ARTICLES 7(5) AND 23(4))**

The Commission considers that the powers conferred on the Commission in Articles 7(5) and 23(4) should be delegated powers, in order to properly reflect the nature of the powers conferred, in accordance with Article 290 of the Treaty on the Functioning of the EU. However, in a spirit of compromise, the Commission will not stand against a qualified majority vote in favour of the Presidency text. Nevertheless, on this specific issue, the Commission reserves its right to avail itself of the legal remedies provided by the Treaty with

a view to seeking clarification by the Court on the issue of delimitation between Articles 290 and 291.

DECLARATION BY THE COMMISSION ON THE PROCEDURE OF ADOPTION OF IMPLEMENTING ACTS

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5 § 4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 § 4 recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.