



**COUNCIL OF THE
THE EUROPEAN UNION**

Brussels, 4 June 2012

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

**10326/12
ADD 1 REV 1**

**CODEC 1418
ENV 400
MI 369
OC 252**

REVISED ADDENDUM TO THE "I/A" ITEM NOTE

from : General Secretariat of the Council
to : COREPER/COUNCIL

No. Cion prop.: 17367/08 ENV 1022 MI 554 CODEC 1863

Subject : Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) - (recast) **(second reading)**
- Approval of the European Parliament's amendments **(LA + S)**
=Statements

COMMON GUIDELINES

Consultation deadline: 6.6.2012

Statement by the Commission 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.

Statement by the Commission 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.

Statement by the Commission 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.

Statement by the Commission 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.

Statement 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.

Statement by Austria

Austria would like to reiterate its reservation against the possibility as set out in Art 17 (1) to allow a foreign producer to appoint a person as an authorised representative. This would endanger proper financing of the collection and recycling of WEEE.

For this reason Austria will, when implementing the WEEE Directive, stipulate the same requirements for such an authorised representative, regarding financial warranties and criminal liability, as for the producer. In consequence, if need be, the national producer, as defined in Art 3(1) (f) (ii) and (iii), would need to assume responsibility for the fulfilment of the producer's obligations.

Furthermore, Austria draws attention to a situation where two different persons will be responsible for electrical appliances containing batteries: On the one hand, according to the Batteries Directive, the importer of the battery, and on the other hand, according to the WEEE Directive, a potential legal representative of a producer from another Member State.

Austria is concerned as to the expected increase of the administrative burden for instance related to the 6th category of WEEE as foreseen in Annex III and IV.

Statement by Malta

Malta believes that the text laid down in Article 17(1) is not consistent with the notion of authorised representative since it requires Member States to allow the appointment of an authorised representative even in the case when a producer is already established in the same Member State where such representative is being appointed. Malta, therefore, does not agree with the appointment of an authorised representative in the case of producers as defined in Article 3(1)(f)(i) to (iii), since these are already established in the Member State they are selling to, and therefore, do not need an authorised representative to be responsible for fulfilling their obligations under this Directive.
