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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2012/19/EU on waste electrical and electronic
equipment (WEEE)

DIRECTIVE (EU) 2024/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Directive 2012/19/EU
on waste electrical and electronic equipment (WEEE)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 184, 25.5.2023, p. 102.

² Position of the European Parliament of 6 February 2024 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) Directive 2012/19/EU of the European Parliament and of the Council³ entered into force on 13 August 2012, and replaced Directive 2002/96/EC of the European Parliament and of the Council⁴.
- (2) Photovoltaic panels, which did not fall within the scope of Directive 2002/96/EC, were included within the scope of Directive 2012/19/EU as from 13 August 2012, by means of their inclusion in category 4 of Annexes I and II, as referred to in Article 2(1), point (a), of Directive 2012/19/EU.
- (3) Article 13(1) of Directive 2012/19/EU provides that Member States are to ensure that producers of electrical and electronic equipment (EEE) bear the costs for the collection, treatment, recovery and environmentally sound disposal of waste EEE (WEEE) from users other than private households resulting from products placed on the market after 13 August 2005.

³ Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).

⁴ Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) (OJ L 37, 13.2.2003, p. 24).

- (4) On 25 January 2022, the Court of Justice of the European Union (the ‘Court’), in its judgment in Case C-181/20⁵, declared Article 13(1) of Directive 2012/19/EU to be invalid in so far as it concerns photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012, by reason of non-justified retroactive effect. The Court held that, prior to the adoption of Directive 2012/19/EU, the Union legislature left Member States the choice of requiring the costs relating to the management of waste from photovoltaic panels to be borne by current or previous waste holders or by the producer or distributor of the photovoltaic panels, pursuant to Article 14 of Directive 2008/98/EC of the European Parliament and of the Council⁶. Subsequently, the Union legislature established a rule, in Article 13(1) of Directive 2012/19/EU, under which those costs are to be borne by producers in all Member States, including in relation to products which the producers had already placed on the market at a time when Directive 2008/98/EC was in force. The Court held that that rule must be regarded as applying retroactively, and is therefore liable to infringe the principle of legal certainty, and that such retroactivity invalidates it as regards photovoltaic panels placed on the market prior to the entry into force of Directive 2012/19/EU.

⁵ Judgment of the Court (Grand Chamber) of 25 January 2022, VYSOČINA WIND a.s. v Česká republika – Ministerstvo životního prostředí, C-181/20, ECLI:EU:C:2022:51.

⁶ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (5) The Court also held in its judgment that the fact that a Member State adopted legislation contrary to a Union directive prior to the adoption of that directive does not constitute, in itself, a breach of Union law, since the achievement of the result prescribed by the directive cannot be regarded as seriously compromised before the directive forms part of the Union legal order.
- (6) The Court's judgment directly implies that Article 13(1) of Directive 2012/19/EU should be amended so that it does not apply with regard to waste from photovoltaic panels from users other than private households placed on the market between 13 August 2005 and 13 August 2012. Furthermore, in light of the considerations set out in the Court's judgment, it is necessary to amend Directive 2012/19/EU also in relation to the financing of waste from photovoltaic panels from private households to which Article 12 of Directive 2012/19/EU applies, and in relation to other EEE, regarding waste both from private households and from users other than private households, which is in a position comparable to that of photovoltaic panels.

- (7) Article 2(1), point (b), of Directive 2012/19/EU extends the scope of application of that Directive to all EEE as from 15 August 2018. Similarly to photovoltaic panels, EEE which did not fall within the scope of Directive 2012/19/EU pursuant to Article 2(1), point (a), thereof but which fell within its scope as from 15 August 2018 pursuant to Article 2(1), point (b), thereof ('open-scope EEE') had previously also not been included within the scope of application of Directive 2002/96/EC. Therefore, prior to the adoption of Directive 2012/19/EU, Member States were left, pursuant to Article 14 of Directive 2008/98/EC, the choice of requiring the costs relating to the management of waste from that EEE to be borne by current or previous waste holders or by the producer or distributor of that equipment. Therefore, applying Article 13(1) of Directive 2012/19/EU to open-scope EEE would be, for the reasons set out in the Court's judgment, contrary to the principle of legal certainty. Furthermore, as Directive 2012/19/EU includes open-scope EEE only as from 15 August 2018, Article 13(1) should be amended in such a way as not to apply to open-scope EEE placed on the market between 13 August 2005 and 15 August 2018.

- (8) As a mirroring provision of Article 13(1) of Directive 2012/19/EU, which applies in respect of users other than private households, Article 12(1) of that Directive read in conjunction with Article 12(3) thereof imposes the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from private households on producers with regard to products placed on the market later than 13 August 2005. For the reasons set out in the Court's judgment, in so far as those provisions apply to the financing of those waste management costs for photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012 and to open-scope EEE placed on the market between 13 August 2005 and 15 August 2018, they would equally apply retroactively in a way that is contrary to the principle of legal certainty. Therefore, Article 12 of Directive 2012/19/EU should be amended in such a way as to not apply to photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012 or to open-scope EEE placed on the market between 13 August 2005 and 15 August 2018.
- (9) Directive 2012/19/EU supplements Directive 2008/98/EC, which is one of the general waste management legislative acts in the Union. Articles 8 and 14 of Directive 2008/98/EC therefore apply to the management of waste from photovoltaic panels and of waste from open-scope EEE for the period when photovoltaic panels and open-scope EEE do not fall within the scope of Directive 2012/19/EU by virtue of the amendments to Articles 12 and 13 thereof by this Directive.

- (10) Article 14(4) and Article 15(2) of Directive 2012/19/EU provide for EEE placed on the market to be marked, preferably in accordance with the European standard EN 50419, which was adopted by Cenelec in March 2006. That standard has been revised in order to update the references it contains to Directive 2012/19/EU. The reference to the standard in those articles should therefore be updated to refer to the revised version of the European standard EN 50419, which was adopted by Cenelec in July 2022.
- (11) Article 15(2) of Directive 2012/19/EU provides that, in order to enable the date upon which the EEE was placed on the market to be determined unequivocally, Member States are to ensure that a mark on the EEE specifies that the EEE was placed on the market after 13 August 2005. Consequent to the amendments to Articles 12 and 13, Article 15(2) should be amended with respect to photovoltaic panels and open- scope EEE, so that it clarifies that the marking obligation applies only from 13 August 2012 in relation to photovoltaic panels and only from 15 August 2018 in relation to open-scope EEE.

- (12) In order to maintain the principle of legal certainty in future revisions of Directive 2012/19/EU, it is important to pay particular attention to preventing the adoption of any provisions that could potentially have unjustified retroactive effects. In addition, it is necessary to give clarity and predictability to EEE producers with regard to the operating conditions that were in effect when their products were placed on the market. That approach helps to avoid the risk of incurring unpredictable costs associated with future WEEE management. Furthermore, it is important that such revisions respect the waste hierarchy as laid down in Article 4 of Directive 2008/98/EC.
- (13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

⁷ OJ C 369, 17.12.2011, p. 14.

- (14) Unsound treatment of waste from photovoltaic panels and of waste from open-scope EEE leads to significant adverse impacts on health and on the environment. It is therefore important to ensure proper treatment of waste from photovoltaic panels and to maximise the recovery of waste from photovoltaic panels. Without prejudice to the changes to the financial obligations that are necessary to cover collection and treatment of waste from photovoltaic panels placed on the market before 13 August 2012 and of waste from all open-scope EEE placed on the market before 15 August 2018 introduced by this Directive, it is important that Member States ensure the environmentally sound management of related WEEE. Member States could encourage producers, through their individual or collective extended producer responsibility schemes, to properly collect and treat the related historical waste from photovoltaic panels and from open-scope EEE.
- (15) When revising Directive 2012/19/EU, and addressing its shortcomings, it is crucial to ensure that the costs of managing WEEE are not disproportionately transferred to consumers or citizens. This includes taking into consideration the ‘polluter pays’ principle, addressing potential provisions pertaining to WEEE collection targets and adherence to the waste hierarchy as laid down in Article 4 of Directive 2008/98/EC.

- (16) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2012/19/EU

Directive 2012/19/EU is amended as follows:

(1) the following article is inserted:

‘Article 24a
Review

1. No later than 31 December 2026, the Commission shall assess the need for a revision of this Directive and, where appropriate, present a legislative proposal in that respect, accompanied by a thorough socio-economic and environmental impact assessment.
2. In the impact assessment referred to in paragraph 1, the Commission shall consider, in particular, the need for:
 - (a) provisions which specifically ensure that the principle of legal certainty is adhered to and that there is no unjustified retroactive effect in any Member State;

- (b) provisions which ensure the implementation of the waste hierarchy as laid down in Article 4 of Directive 2008/98/EC;
- (c) provisions which ensure that citizens and consumers are not burdened with disproportionate costs, in line with the ‘polluter pays’ principle;
- (d) provisions which ensure full implementation and enforcement of this Directive, in particular with regard to adequate collection targets, as well as with regard to preventing illegal trade of WEEE;
- (e) creating a new EEE category for ‘photovoltaic panels’ under this Directive with the aim to disassociate photovoltaic panels from the existing EEE category 4, ‘large equipment’, as referred to in Annexes III and IV, and calculating the collection targets on the basis of waste photovoltaic panels available for collection based on their expected lifetime, rather than on the quantity of products placed on the market;
- (f) establishing a mechanism to ensure that, in the event of failure or liquidation of the producer, the future costs of collection, treatment, recovery and environmentally sound disposal of waste from photovoltaic panels from both private households and users other than private households will be covered financially.’;

(2) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that producers provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households that has been deposited at collection facilities set up under Article 5(2) as follows:

- (a) for WEEE resulting from EEE referred to in Article 2(1), point (a), other than photovoltaic panels, where such EEE was placed on the market after 13 August 2005;
- (b) for WEEE resulting from photovoltaic panels where such photovoltaic panels were placed on the market from 13 August 2012; and
- (c) for WEEE resulting from EEE referred to in Article 2(1), point (b), and which does not fall within the scope of Article 2(1), point (a), where such EEE was placed on the market from 15 August 2018.’;

(b) in paragraph 3, the first subparagraph is replaced by the following:

‘3. Each producer shall be responsible for financing the operations referred to in paragraph 1 relating to the waste from his own products. The producer may choose to fulfil this obligation either individually or by joining a collective scheme.’;

(c) paragraph 4 is replaced by the following:

‘4. The responsibility for the financing of the costs of the management of WEEE from products referred to in Article 2(1), point (a), other than photovoltaic panels, placed on the market on or before 13 August 2005 (‘historical waste’) shall be borne 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.’;

(3) in Article 13, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households is to be provided for by producers as follows:

(a) for WEEE resulting from EEE referred to in Article 2(1), point (a), other than photovoltaic panels, where such EEE was placed on the market after 13 August 2005;

- (b) for WEEE resulting from photovoltaic panels where such photovoltaic panels were placed on the market from 13 August 2012; and
- (c) for WEEE resulting from EEE referred to in Article 2(1), point (b), which does not fall within the scope of Article 2(1), point (a), where such EEE was placed on the market from 15 August 2018.

For historical waste from EEE referred to in Article 2(1), point (a), other than photovoltaic panels, being replaced by new equivalent products or by new products fulfilling the same function, the financing of the costs shall be provided for by producers of those products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for that financing.

For other historical waste from EEE referred to in Article 2(1), point (a), other than photovoltaic panels, the financing of the costs shall be provided for by the users other than private households.’;

(4) in Article 14, paragraph 4 is replaced by the following:

‘4. With a view to minimising the disposal of WEEE as unsorted municipal waste and to facilitating its separate collection, Member States shall ensure that producers appropriately mark — preferably in accordance with the European standard EN 50419:2022 — EEE placed on the market with the symbol shown in Annex IX. In exceptional cases, where this is necessary because of the size or the function of the product, the symbol shall be printed on the packaging, on the instructions for use and on the warranty of the EEE.’;

(5) in Article 15, paragraph 2 is replaced by the following:

‘2. In order to enable the date upon which the EEE was placed on the market to be determined unequivocally, Member States shall ensure that a mark on the EEE specifies that the latter was placed on the market after 13 August 2005. Preferably, the European standard EN 50419:2022 shall be applied for this purpose.

For photovoltaic panels, the obligation referred to in the first subparagraph shall only apply to photovoltaic panels placed on the market from 13 August 2012.

For EEE referred to in Article 2(1), point (b), and which do not fall within the scope of Article 2(1), point (a), the obligation referred to in the first subparagraph of this paragraph shall only apply to the EEE placed on the market from 15 August 2018.’.

Article 2
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [18 months from the date of entry into force of this Directive]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
