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THE EUROPEAN UNION**

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

date of receipt: 11 August 2011

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

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Subject: Communication from the Commission to the European Parliament pursuant to  
Article 294(6) of the Treaty on the Functioning of the European Union  
concerning the position of the Council on waste electrical and electronic  
equipment (WEEE)

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Delegations will find attached Commission document COM(2011) 478 final.

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Encl.: COM(2011) 478 final



EUROPEAN COMMISSION

Brussels, 11.8.2011  
COM(2011) 478 final

2008/0241 (COD)

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**position of the Council on the adoption of a Directive of the European Parliament and of  
the Council on waste electrical and electronic equipment (WEEE)**

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**position of the Council on the adoption of a Directive of the European Parliament and of  
the Council on waste electrical and electronic equipment (WEEE)**

**1. BACKGROUND**

Date of transmission of the proposal to the European Parliament and to the Council 16 December 2008  
(document COM(2008) 810 final – 2008/0241 COD):

Date of the opinion of the European Economic and Social Committee: 11 June 2009

Date of the opinion of the European Parliament, first reading: 03 February 2011

Date of adoption of the position of the Council: 19 July 2011

**2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION**

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 by clarifying that producer responsibilities are based on a European approach, and to ensure better implementation, especially by reversing the burden of proof on exports of used equipment suspected to be WEEE.

**3. COMMENTS ON THE POSITION OF THE COUNCIL**

**3.1. General comments**

The European Parliament gave its opinion at first reading on 03 February 2011. The Commission accepted in full, in part or in principle 55 of the 86 amendments adopted by the European Parliament in its first reading. 30 of these 55 amendments are already reflected, at least in part, in the common position. The position of the Commission on the amendments adopted by the European Parliament in its first reading is set out in document SP(2011)2217.

The Commission accepted amendments, either fully or in principle or in part, which would clarify the context of the proposal or further improve it in line with the objectives set. These include, in particular, the deletion of the link to the scope of the

Directive on restrictions of hazardous substances in electrical and electronic equipment (RoHS), to base the collection target on WEEE generated under certain conditions, and to oblige distributors to put in place appropriate collection and awareness schemes for very small WEEE.

The Commission rejected amendments which would alter the nature of the proposal, such as amendments which could lower the level of environmental and human health protection or lead to an unnecessary increase of administrative burdens. It also rejected amendments that go beyond the scope of the recast procedure applied in line with the "Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts".

Political agreement was reached by Member States unanimously on 14 March 2011, while the Commission had expressed significant reservations on the text.

### **3.2. Detailed comments**

#### *3.2.1. Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position*

Amendments 2, 10, 12, 13, 15, 16, 20, 21, 24, 28, 29, 32, 37, 44, 45, 57, 62, 64, 65, 66, 68, 78, 80, 81, 82, 83, 86, 88, 97 and 98 were accepted by the Commission and incorporated in full, in part or in principle in the Council's position.

#### *3.2.2. Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the common position*

Amendments 14, 18, 27, 99 and 102 were rejected by the Commission but incorporated in the Council's position in full, in part or in principle. Amendments 14 and 18 relate to the distinction between WEEE from private households versus WEEE from users other than private households. The Commission is not convinced that this proposed text increases clarity. Amendment 99 introduces a new requirement to adopt European standards, which can be in conflict with those parts of the text not subject to the recast procedure.

#### *3.2.3. Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position*

Amendments 1, 3, 4, 5, 6, 7, 9, 22, 23, 26, 31, 38, 39, 40, 41, 42, 43, 52, 58, 59, 60, 69, 76, 92 and 100 were accepted in full, in part or in principle by the Commission but not incorporated in the Council's position. They include significant elements of the text concerning definitions, the collection target, measures to increase awareness and collection, and the adaptation of Comitology provisions to the entry into force of the Treaty on the Functioning of the European Union.

#### *3.2.4. Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position*

Amendments 11, 25, 35, 36, 46, 47, 48, 49, 50, 51, 54, 55, 56, 61, 67, 70, 71, 72, 73, 74, 75, 77, 94, 95, 96 and 101 were rejected by both the Commission and the Council. Those amendments do not add to the clarity or consistency of the text, or change those parts of the text which are not subject to the recast procedure. The latter

is especially the case for amendments 47-51 and 75, relating to the financial obligations of producers. Amendment 46 would introduce new record keeping requirements into the text, which are outside the scope of the recast procedure.

### 3.2.5. *Changes made by the Council to the Proposal*

The Council proposed the following main changes to the Commission proposal:

**Open scope:** The Council proposes that the scope shall in the future, starting six years after entry into force, include all "Large equipment" and "Small equipment". This approach is also referred to as an "open scope", because the scope is not limited to a list of closed categories as currently the case, but "open" to any new equipment fulfilling the definitions of the Directive. A number of new exclusions and related definitions would accompany the introduction of the "open scope". The Commission considers that equipment falling into the scope of the Directive currently should not be excluded in the future, and that extensions of the scope should be undertaken only if the benefits exceed the costs. As a matter of principle, an assessment in line with the guidelines for impact assessments is needed in order to ensure that these conditions are met.

**Definition of categories of WEEE:** The Council replaces the current ten categories in the Annex of the Directive by a new set of five categories. Currently, these categories are important to define the scope of the Directive, and to differentiate the recovery and recycling targets. In the future, the categories would according to the Council not be decisive to define the scope any longer (see above "open scope"), but would continue to differentiate the recovery and recycling targets. The Commission can accept a change of the definition of these categories of WEEE, if it does not lead to a change of ambition level for recycling/recovery, and does not create unnecessary administrative burdens.

**Extension of scope to include photovoltaic panels:** The Council proposes to extend the scope of the Directive from the date of entry into force to include photovoltaic panels. The Commission agrees that the collection, proper treatment and recovery of photovoltaic panels should be ensured. The Commission has carried out a study to assess the impacts of inclusion under the scope of the WEEE Directive. The study indicates that there are environmental benefits and opportunities for the recovery of secondary raw materials. This study and the comments from stakeholders following it can be used for further consideration on the potential inclusion of photovoltaic panels in the scope of WEEE.

**National approach to producer obligations:** The Council applies a definition of producer that builds on the concept of national markets. This national concept can lead to a situation of multiple registration, multiple payments for the same product, multiple requirements for treatment information and marking of products, as well the obligation for producers to be legally represented in more than one Member State. The Commission had proposed to clarify that a concept based on the Community market should be used to avoid such burdens, and still considers that a European approach to the producer obligations should be agreed. This applies especially to the obligations of cross-border distance sellers.

**Collection target:** The Council requires Member States to achieve the collection target of 65% of electrical and electronic equipment placed on the market eight years after entry into force of the Directive. Compared to the Commission proposal, this implies a delay of about four years. For eight Member States, two years of additional flexibility are foreseen. The Commission considers that transitional arrangements to take account of specific national circumstances, as already included in the Commission proposal, can be further elaborated in the text. However, in view of the need to act decisively in favour of increased resource efficiency and access to secondary raw materials, it is important to keep an ambitious collection target both as regards the level and the moment of entry into force. Therefore, the Commission cannot accept to delay the year the collection target needs to be achieved. The Commission can agree to the Council's intention to treat mercury containing fluorescent lamps as priority products for separate collection, for which a dedicated collection target could be established in the future.

**Development of standards:** The Council requires that the Commission shall develop minimum standards for the treatment of WEEE on the basis of Article 27 of Directive 2008/98/EC. The Commission does in principle see benefits in establishing standards for the treatment of WEEE, and is currently supporting a project developing such standards to be used on a voluntary basis. However, the Commission considers that the new text on standards can be in conflict with those parts of the text not subject to the recast procedure.

**Adaptations related to the Treaty on the Functioning of the European Union and other issues:** The Council foresees implementing acts for Articles 7, 16, 23 and Annex VI. The Commission considers that these should be delegated acts in line with the Commission proposal. The requirement for the Commission to consult stakeholders before the adoption of a delegated act should be mentioned in the respective recital only, and deleted in the enacting terms of the Directive. The Council has deleted the reference to a correlation table of transposition, which the Commission considers necessary in order to monitor the transposition of the Directive in a spirit of Smart Regulation, in line with Commission Communication COM(2010)543.

#### 4. CONCLUSION

Not all changes introduced by the Council are consistent with the objectives of the Commission's proposal, in particular with regard to resource-efficiency, the need to recover secondary raw materials, and the need to reduce unnecessary administrative burdens. Therefore, the Commission can not accept the Council's position in its entirety.