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to : Delegations

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Subject : Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) - (recast)
- Information from the Presidency

I. INTRODUCTION

On 16 December 2008 the European Commission submitted the proposal for a recast of Directive on waste electric and electronic equipment (WEEE) to the European Parliament and the Council. A proposed recast was necessary, according to the Commission, because experience with the first years of implementation of the WEEE Directive ¹ had indicated technical, legal and administrative problems resulting in unnecessary administrative burdens, continuing environmental harm and low levels of innovation in the collection and treatment of the waste. In particular:

¹ Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) entered into force on 13 February 2003; the date of transposition was set on 13 August 2004.

- to improve clarity on the products covered by the current WEEE Directive and their categorisation, the Commission proposes to move Annex IA and IB of Directive 2002/96/EC describing the scope for both the WEEE and RoHS Directives to the RoHS Directive which is based on Article 95 of Treaty. The scope of the WEEE Directive, based on Article 175 of the EC Treaty, would refer to the scope of the RoHS Directive.
- to improve effectiveness in the separate collection of WEEE, a target collection rate of 65% WEEE (including B2B equipments) is proposed, set in function of the average amount of EEE placed on the market in the two preceding years. This target reflects the amounts of WEEE which, according to the Commission, are currently already separately collected in the Member States and takes the variations in EEE consumption in individual Member States into account. It should be achieved annually, starting in 2016. The possibility of transitional measures is foreseen as well as a re-examination of the target by the European Parliament and Council in 2012 on the basis of a proposal from the Commission.
- to encourage the preparation for re-use of whole WEEEs, it is proposed to include re-use of whole appliances in the increased (+5%) target for recycling. A recovery and recycling target for medical devices is also proposed.
- to reduce administrative costs and unnecessary administrative burdens for the producers the Commission proposes to harmonize the national registration and reporting obligations for producers including making the registers inter operational. This is accompanied by a new definition of producer at EU level.

The position of the European Parliament in first reading is not expected before May 2010.

On 21 October 2009, the Council held a policy debate on the proposal.

The Working Party on the Environment discussed the recast proposals on several occasions. A Presidency compromise text, prepared following these discussions, can be found in the *Addendum to this note*. The latest state of play is summarized in Sections II to IV below.

All delegations have a general scrutiny reservation on the latest Presidency text.

Malta has a parliamentary scrutiny reservation.

II. KEY OUTSTANDING ISSUES

1) **Scope of the Directive - Article 2 paragraphs 2 and 3**

a) WEEE included in the scope

The Presidency compromise re-introduces in the Directive two Annexes (IA and IB) related to the scope, as in the WEEE Directive presently enforced. Both Annexes are simplified and the waste categories are reduced from 10 to 5. In this respect:

- Seven delegations prefer to have an open scope, covering waste from all EEE, and consider that the Annexes should not play a role in defining the scope. Three delegations support this position but could also work on the basis of the Presidency compromise.
- Eleven delegations do not support an open scope and prefer the Presidency compromise on this point while the Commission maintains its proposal whereby the scope is defined *via* a cross reference to the Annexes of the RoHS Recast proposal comprising 10 main categories and a list of product within each category.

b) Exclusions

The Presidency compromise maintains the exclusions virtually unchanged from the Commission proposal.

Five delegations request the exclusion of *fixed installations*, considering this would be a clarification of the current practice while three delegations do not support this addition and suggest to limit the current exclusion of *large scale fixed industrial tools* (installations).

Four delegations suggest to exclude photovoltaic panels given that voluntary agreements are being negotiated and that PV modules should significantly contribute to the achievement of renewable energy goals. Other delegations have a reservation on this suggestion. The Commission considers that photovoltaic panels at present are excluded from the scope of the Directive because they do not figure in the categories of EEE listed in Annex IA defining the scope.

2) Separate collection target

The proposed target for separate collection of WEEE set at 65% (total weight of WEEE collected in a given year expressed as a percentage of the average weight of EEE placed on the market on the three preceding years) to be achieved annually from 2016 is questioned by a great majority of delegations. In particular:

- Fourteen delegations find the collection target too ambitious and not sufficiently realistic. As an alternative, some delegations suggest to achieve this target gradually by, for example, reaching 35-40% in 2016 and 65% in 2020.
- Six delegations consider that the target should be referred to the EEE placed on the market for a longer period than 3 years (6 years are suggested).

- Eight delegations consider that the target could be differ for certain categories of WEEE and suggest several criteria to this end.
- Several delegations express reservations on the proposed comitology procedure for defining transitional arrangements and for establishing a method to calculate the total weight of EEE placed on the market. They consider that such provisions should be developed in co-decision.
- Finally, several delegations note that an agreement on the collection target will only be achieved once the role of the producer who, according to the Commission proposal, is responsible for achieving the target itself, will be clarified (see point 3 below).

3) **Role and definition of producer**

At the request of all delegations and following several months of discussions the Presidency decided to re-introduce the current meaning of the definition of producer (at national level) and to further clarify this definition along the lines of the definition of producer agreed in the Batteries Directive. The new definition of producer proposed by the Commission would entail important difficulties for Member States in the implementation of the Directive itself, notably with respect to compliance with the principle of financial responsibility of the producer for the collection, treatment, recovery and environmentally sound disposal of the waste and the achievement of the collection and recovery targets. While all delegations can in principle agree with this change, the Commission maintains its original proposal. Furthermore:

a) Financial responsibility and ownership of the waste (Articles 7 and 12)

While the principle of financial responsibility of the producer (from the collection point onwards) is already established in the current Directive, the coverage by the producers of all the costs occurring for collection facilities for WEEE from private households is encouraged in the Commission proposal.

Following the remarks of several delegations on the practical difficulties raised by the proposal as regards the producer (who is financially responsible) and his obligations concerning the collection and recovery of the waste, the link between the producer and the different collection routes for WEEE (official channels and other "parallel" channels) and finally the gathering of information on all the WEEE arising, the Presidency has introduced in the text two new paragraphs (Article 7(1a) and Article 12(1a)) with the aim of clarifying the proposal on these points.

A number of delegations maintain a reservation on these provisions. In particular: Five delegations do not support the added encouragement to Member States to implement systems where the producers would cover all the collection costs; Two delegations have doubts as regards the consistency between the text proposed by the Commission and the producers' responsibility for reaching the collection target, noting that the reaching of this target should be the responsibility of Member States; Two delegations, agreeing with the principle of producers responsibility, suggest to add clarity by establishing an obligation to hand in the collected WEEE back to the producer or third parties acting on their behalf.

b) Register of producers (Articles 16 and 16a)

The inter-operational registers proposed by the Commission in Article 16 was criticised by all the delegations who raised a number of practical difficulties, in connection with the proposed definition of producers, as regards, in particular, the actual monitoring of producer's activities across the Member States, monitoring of the quantities of EEE placed on different national markets, and for the transfer of money related to intra-community transfers of products or WEEE. The Presidency, as a consequence, presented a compromise text on Article 16 accompanied by a new Article 16a on administrative cooperation and exchange of information, consistent with the definition of producers at national level on the one hand, and aiming at tackling the need for greater harmonization of requirements to producers in full respect of internal market rules on the other. While the Commission maintains its original proposal, a majority of delegations can support the Presidency's approach.

III. OTHER ISSUES

Annexes IA and IB on the scope: while a majority of delegations can accept a reduced number of categories, some questions remain open. Many delegations ask to define parameters to distinguish between "large"(new category 4) and "small" equipment (new category 5); four delegations propose a separate category for medical equipment (with separate targets for collection and recovery). Several modifications are also presented in relation to Annex IB listing examples of products under each Annex IA category.

Definition of producers: five delegations propose to strengthen the definition in order to allow for a better enforcement of the financial obligation for collection and recovery in each Member States (Article 3j).

Recovery targets: pending an agreement on the scope and the Annexes (IA and IB) establishing the product categories, the recovery targets are still subject to scrutiny by many delegations. Four delegations have a reservation on the proposed 5% increase of these targets (Article 11).

Information for users: four delegations object to the provision allowing producers to show the cost for management of WEEE to purchasers (Article 14).

IV. AGREED PROVISIONS

There is a broad agreement on the following provisions:

Articles: 1, 4, 5, 6, 15, 19, 22 (Articles 9, 13 and 18 and Annexes II, III and IV are unchanged by the Recast).

Discussion of the recitals will take place once there is broad agreement on the content of the body of the act. In addition, Annex VI (correlation table) will have to be updated to reflect the changes in the legal text.