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NOTE

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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)

Delegations will find attached comments from **DELETED** on 17367/08.

DELETED

<p>Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) - (recast) 17367/08</p>	<p>DELETED proposals</p>
<p>Art 3 Definitions</p>	
<p>(j) "producer" means any natural or legal person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts:</p> <ul style="list-style-type: none"> (i) manufactures electrical and electronic equipment under his own name or trademark, or has electrical and electronic equipment designed or manufactured and markets that electronic equipment under his name or trade mark (ii) resells under his name or trademark equipment produced by other suppliers, a reseller not being regarded as the "producer" if the brand of the producer appears on the equipment, as provided for in subpoint (i), or 	<p>(j) "producer" means any natural or legal person in a member state who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts:</p> <ul style="list-style-type: none"> (i) manufactures electrical and electronic equipment under his own name or trademark, or has electrical and electronic equipment designed or manufactured and markets that electronic equipment under his name or trade mark (ii) resells under his name or trademark equipment produced by other suppliers, a reseller not being regarded as the "producer" if the brand of the producer appears on the equipment, as provided for in subpoint (i), or

<p>(iii) is established within the Community and places electrical and electronic equipment from a third country on a professional basis onto the Community Market</p> <p>Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a "producer" unless he also acts as a producer within the meaning of subpoints (i) to (iii);</p>	<p>(iii) places electrical and electronic equipment on the market for the first time within the territory of that Member State on a professional basis;</p> <p>Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a "producer" unless he also acts as a producer within the meaning of subpoints (i) to (iii);</p>
<p>(p) "placing on the market" means the first making available of a product on the Community market;</p>	<p>(p) "placing on the market" means the first making available of a product on the market within the territory of a Member State on a professional basis;</p>
<p><u>Explanatory note:</u></p> <p>It should be possible for Member States to impose national obligations on the person, who is placing products onto their national markets for the first time. In the case of batteries there was a discussion on this definition also and the <u>Batteries-Directive</u> has a clear definition of producer, as the person, who places batteries on the national market for the first time. In the case of End-of Live Vehicles it is the same. The Commission proposal on the recast of the WEEE-Directive would hinder an effective control of the financial obligations of the producers. This means massive problems for the existing national operating collection and treatment systems and for the collecting municipalities.</p>	

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General comments

DELETED supports the harmonizing of definitions with other waste directives. **DELETED** also supports the intention to increase the collection rate of WEEE and recovery targets. Additionally, **DELETED** supports the proposal to prohibit the disposal of untreated separately collected WEEE.

DELETED is most concerned about the proposed new definition of producer which defines producer on a Community level. **DELETED** prefers to keep the present definition of producer which refers to those actors who place a product on the market in a Member State. This proposal together with the proposed changes to registration will result in such essential changes to the present situation that it is doubtful that significant changes of this kind belong under a recast procedure.

Preliminary comments on special articles

Scope

Art 2.1

DELETED *does not support the proposal to put Annexes IA and IB of the WEEE Directive, describing the scope, under the RoHS Directive.*

DELETED considers that this might be problematic, because, while WEEE is a minimum directive (based on Article 175 of the Treaty), RoHS is a harmonizing directive (based on Article 95). It should be very clear in the WEEE Directive that the lists in the Annexes are not exhaustive.

Art 2.3 b) and c)

DELETED *does not support the new exemptions from the scope.*

DELETED *considers that there should not be other exemptions from the scope except for very specific ones, for example, like space equipment.*

A practical example of the complications with the exemption in Article 2.3(b) is, for instance, the many IT products which are sold directly to end-users with consumer packaging and installation instructions although they need to be installed on the computer. Examples of these are hard drives (internal and external) and sound cards, among others. According to the wording they are excluded from the scope, which is not in line with the environmental purposes of the directive. The wording is speculative and will cause problems in practice.

Art 2.4

DELETED *does not support the proposal to classify WEEE as waste from private households or from users other than private households based on assessing the amount of equipment sold to private households or business.*

DELETED *proposes that under the definition of WEEE from private households all equipment that could be used in households should be included, regardless of the place where the equipment is actually used.*

For the equipment that could be used by both private households and users other than households, it will be impossible in practice, e.g. at WEEE collection sites, to differentiate where the equipment was originally sold. The classification should be based only on the technical characteristics of EEE. The classification should also be done nationally. The comitology procedure is too heavy and slow to classify thousands of different equipment.

Definitions

Art. 3(j), 3(o) and 3(p)

DELETED *is opposed to a new definition of producer which defines producer on a Community level. **DELETED** prefers to keep the present definition of producer which refers to those actors who place a product on the market in a Member State.*

The new definition would make it very difficult to implement the directive and supervise its implementation, if Member States, for example, cannot enforce their own national legislation and its articles to foreign actors.

The new definitions raise several questions which are not solved in the WEEE recast proposal.

These questions are:

- How and by which procedure can a national authority have jurisdiction based on national legislation over a foreign company, e.g. in order to ensure that the company fulfills its waste management obligations and bear its costs under the WEEE?
- What kind of administrative pressure, and by which procedure, can a national authority, if necessary, use on a foreign company, and what kind of appeal procedure is connected to these decisions?
- By which procedure and in what kind of situation can a national authority ask for executive assistance from another Member State (e.g. from that country where a foreign company is registered as a producer) for the purpose of the implementation of the directive? Which country's legislation is then conformed to?

Disposal and transport of collected WEEE

Art. 6

DELETED supports the proposal to prohibit the disposal of untreated separately collected WEEE.

A clarification of the meaning of "untreated" might be necessary.

Collection rate

Art. 7

DELETED supports the raising of the collection rate. The present collection target (4 kg/inhabitant per year) is too low. Additionally, the instructions in the definition on how to calculate the collection rate need to be easy to understand and calculate to achieve reliable results.

The proposed new definition of producer, which defines producer on a Community level, and new requirements for registration will make it very difficult to really know the amounts of the equipment placed on the market in a particular Member State, if the registration is made only in the country where the equipment was placed on the Community market for the first time.

Treatment and Permits and inspections

Art. 8 and 9

Paragraph 8.1 "member States shall ensure that all separately collected WEEE undergoes treatment" needs clarification, as "treatment" means both recovery and disposal (incl. landfilling) operations.

DELETED proposes taking into consideration the need to add similar exceptions to registration or permit requirements for distributors' collection points, as has been done for collection points for waste portable batteries and accumulators in the Directive on batteries and accumulators (2006/66/EC, Article 8).

E.g. the implementation of the Commission regulation on implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps would require an efficient collection scheme for compact fluorescent lamps. The use of these lamps is going to increase significantly after ecodesign requirements enter into force.

Recovery targets

Art. 11.2

DELETED supports the proposal for new recovery targets. **DELETED** suggests the following amendment to the proposed paragraph 11.2:

These targets are calculated as weight percentage of separately collected WEEE [...].

Targets should be calculated for all WEEE. The proposal to calculate targets only for separately collected WEEE that is sent to recovery facilities allows for the possibility of avoiding or influencing the targets, e.g. by storing the waste.

Financing in respect of WEEE from private households

Art. 12

The proposed new definition of producer which defines producer on a Community level causes uncertainty in regard to financing procedures. Where and by which mechanisms do producers have to pay their share of costs? How should assets collected in one Member State from one producer be divided among other Member States, where EEE from the producer is sold, and to whom are the costs paid? In the recast proposal, it is unclear who would receive a possible guarantee in this case.

Information for users

Art. 14.1

DELETED *does not support the proposed addition in Art. 14.1.*

The proposal is not in line with similar directives on different products. It's very difficult to estimate actual costs for different equipment. In principle the supervision of this requirement would be very difficult.

Registration, information and reporting

Art. 16

DELETED is very uncertain and has misgivings about the proposed changes in Art. 16. The proposed new definition of producer, together with the proposed changes in registration, would mean that we should create new registers and that all producers should be re-registered. In practice we would lose all registers we have created in the last three years. The proposed recast leaves it open how the financing and reporting will succeed in practice.

It's unclear in which country the producers should be registered. That is, is it optional for producers? It's also unclear how a foreign company itself could get reliable information on how many kilograms of its products, divided into ten product categories, have ended up in markets in different Member States each year. For example, a European company (i.e. producer) imports products from several non-EU countries and places them for the first time on the EU market in one country. The company then sells these products to wholesalers in another country, who sells them to smaller wholesale firms in a couple of other countries, and from these countries they arrive at retail dealers in yet another country. Every year, the very first company in this chain – that is, the producer and the only one who is required to register – should be able to give information on the products which have been distributed in different countries and report these numbers to the register

in the country in which the products are registered. Other Member States have to then request the information they need from this first country. Given that there are 27 Member States and thousands of companies in each country, it is very unclear how this information would even be reliable on any level.

Inspection and monitoring

Art. 20

DELETED supports the proposed amendments regarding inspection and monitoring to strengthen the supervision of WEEE treatment.

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Article 2

Scope

Moving the scoping issue from the WEEE Directive to the RoHS Directive will not solve the problem of lack of transparency in scope.

The WEEE Recast Proposal refers to Annex I of the RoHS Directive Recast Proposal for its scope (10 broad categories of EEE). The WEEE Directive is adopted under Article 175 of the Treaty, so there is possibility for Member States to go beyond the minimum list of EEE (Annex II of the RoHS Directive Recast proposal). However, if Member States can add to the scope for WEEE (but not RoHS) there is a risk that the harmonised approach would be lost within and between Member States which would cause confusion and complicate pan-EU monitoring and compliance, not least with respect to an importer into several Member States.

For all these reasons, it would be more appropriate if all equipments needing electricity are in the scope. Then 10 categories of EEE and exemption criteria can be used.

In order to solve the problem of distinguishing between B2B and B2C, classification of types of equipments into these groups shall be laid down.

Exclusions

- Equipment which is not intended to be placed on the market as a single functional or commercial unit – needs clarification.
- Equipments above stipulated volt limits or so-called large-scale stationary industrial tools – have to be excluded explicitly from the scope.
- Cables, components, accessories and spare parts – have to be excluded from the scope.

Article 3

Definition of producer

The proposed definition of "producer" refers only to placing EEE on the market from a third country onto the Community Market. This would lead to an exclusive "European producer-definition". Member states will be forced to apply their national provision to European producers and importers, wherever they are based. This will cause problems in controlling or enforcing the law referring to financial responsibility and furthermore in financing collection and treatment of WEEE. Due to the fact that **DELETED** has a high importation rate, the new definition will have a huge impact on our importer-type producers' register.

It would be more straightforward to define "producer" at the national level to facilitate national monitoring and supervision of producer obligations. We prefer the term "producer" to be defined at the national level to facilitate national monitoring and supervision of producer obligations.

Under the new definition, companies importing from Member States are no longer considered producers. The current collection and treatment systems will be negatively affected.

Only a company importing from outside the EU for the "first time" is considered to be a producer – this "first time" element will be difficult to monitor and control.

Article 5

Separate collection

The 65% collection target is too high (current rate of collection is around 25%). In our opinion a maximum collection rate of 40% would be more appropriate.

The above mentioned 65% collection target expressed as a percentage of the average weight of EEE placed on the market **in the two preceding years** in that Member State is not the best method for calculating the total weight. Having regard to the fact, that weight of new equipments is lowered in comparison with the old ones, Member States will be obliged to collect smaller and smaller amounts of WEEE.

Article 16

Registration, information and reporting

The requirements relating to registration are difficult to fulfil. Current registers are already completed and adaptation to new requirements would take considerable financial and organizational effort. It is unclear how the register will work. There is no indication of a timeframe for establishing a register, no indication of which body will establish the format of registration, and no indication about the frequency of reporting and other related issues. The new registration process in tandem with the new definition of "producer" will result in a costly duplication of effort (modification of existing registers and re-registration of producers). There is concern about the practicability of Member States ensuring that any producer on their territory can enter in their national register all relevant information, including reporting requirements and fees, reflecting its activities across all other Member States. It is also not clear whether fees would be transferred from one Member State to another.

Allowing the register to be operated by collective producer responsibility schemes is a total reversal of the existing system. There is a question of whether a register can also be a collective scheme. If a collective system runs a register only for its membership this would result in only partial market data. If a collective system runs the sole register in a Member State, it will have access to sensitive market data and may reduce competition, which would have negative impacts for consumers. Registers will not be economically competitive with collective schemes.