

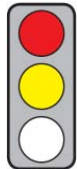
# WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)

Status: 30.03.09

## MAIN ISSUES

**Objective of the Directive:** The adverse impact of waste electrical and electronic equipment on health and the environment should be prevented or reduced.

**Groups Affected:** Producers and retailers of electrical and electronic equipment, waste disposal companies, households



**Pros:** Producers will be relieved of reporting obligations.

**Cons:** (1) Producers have virtually no influence on whether or not collection, recovery, re-use and recycling rates are met.

(2) The possible transferral of the total costs of collection facilities for waste equipment to producers would lead to significant additional costs.

## CONTENT

### Title

**Proposal COM(2008) 810**, of 3. December 2008, for a **Directive** of the European Parliament and of the Council on **waste electrical and electronic equipment (WEEE)** (Recast)

### Abstract

#### ► Objectives and subject matter

- The adverse impact of waste from electrical and electronic equipment on the environment and human health is to be prevented or reduced. In addition, such equipment should be used more efficiently as a source of raw materials (revised Art. 1).
- "Waste electrical and electronic equipment" means equipment
  - that "uses electrical currents or electromagnetic fields to operate" or "is used to generate, transfer and measure such currents and fields,"
  - that is designed for use with a voltage rating not exceeding 1.000 Volt for alternating current and 1.500 Volt for direct current and
  - whose holder "discards, intends or is required to discard" it, so that it is classified as "waste" under EU law [revised Art. 3(a) and (b) in conjunction with Art. 3(1) of Directive 2008/98/EC].
- Directive 2002/96/EC (waste electrical and electronic equipment – "WEEE Directive") is to be recast by the proposal.

#### ► Scope

- The Directive regulates the waste management of electrical and electronic equipment. This includes the "collection", "treatment", recovery and disposal of waste equipment.
- The Directive is valid for ten categories of equipment [revised Art. 2(1) in conjunction with Annex I of proposal COM(2008) 809 for a recast of the RoHS Directive 2002/95/EC (Restriction of Hazardous Substances; cf. [CEP accompanying document](#))].
- The Directive makes a distinction between waste equipment from private households ["business to consumer" - or "B2C" products] and waste equipment from other users ["business to business" - or "B2B" products]. The classification is determined by the Commission, provided that a committee of representatives from the Member States agrees and neither the Council nor the European Parliament raises any objections [new Art. 2(4), Art. 18(3); "regulatory procedure with scrutiny"].

#### ► Requirements for the collection of WEEE

- The disposal of waste electrical and electronic equipment as unsorted municipal waste is to be "minimised", and separate collection be employed instead [Art. 5(1)].
- The Member States must ensure that B2C waste is collected.
  - They must ensure that users and retailers who "supply" equipment to the market ("distributors") are able to hand in waste equipment for free at collection points [amended Art. 3(k), Art. (2)(a)]. Manufacturers must then gather WEEE from the collection points for further waste management.
  - Producers may set up their own – either individual or collective – collection systems, but are not obliged to do so [Art. 5(2)(c)].
  - When "supplying" a new product, distributors must take back waste equipment which "fulfils the same functions" [Art. 5(2)(b)].
- Producers must provide for the collection of B2B equipment [Art. 5(3)].

- From 2016, producers must achieve an annual minimum collection rate of 65% in the individual Member States. This refers to the ratio between the total weight of WEEE collected in a given year and the average total weight of the equipment placed on the market in the two preceding years. [new Art. 7(1)]
- ▶ **Requirements for “treatment”**
  - The disposal (through landfill) or recycling of waste equipment without “treating” it beforehand is prohibited [Art. 6(1), Art. 8(1)].
  - The treatment of WEEE includes, “as a minimum”, the removal of all fluids as well as certain specific substances and components [Art. 8(2), Annex II].
  - Treatment may also be carried out outside the respective Member State or the EU, provided that shipment to the treatment site complies with EU standards (new Art. 10).
- ▶ **Requirements for recovery**
  - Producers must set up recovery systems – either individually or collectively. Recovery must ensue using the “best available techniques”. [Art. 8(3)]
  - By 31<sup>st</sup> December 2011, producers must meet detailed rate targets for overall recovery, as well as for preparation for the re-use and recycling of WEEE [revised Art. 11(1)(a-d); cf. [CEP accompanying document](#)].
- ▶ **Financing waste management**
  - **B2C equipment**
    - Producers shall “at least” finance the collection, treatment, recovery and disposal of WEEE deposited at collection facilities, but are not obliged to finance the collection facilities themselves. “Where appropriate”, Member States shall “encourage” producers to bear the costs of collection as well [Art. 12(1), Recital 19].
    - The following is valid for equipment placed on the market after 13. August 2005: Every producer shall bear the waste management costs for their own products [Art. 12(2)].
    - The producer may fulfil this obligation either individually or by joining a “collective scheme”.
    - When placing equipment on the market, the producer shall provide a guarantee that the subsequent management of the WEEE will be financed.
    - The following is valid for equipment placed on the market before 13. August 2005 (“historical waste”): Those producers who are active in the market when the costs occur shall contribute proportionately (e.g. according to market share) to the waste management costs [Art. 12(3)].
  - **B2B equipment**
    - The following is valid for equipment placed on the market after 13. August 2005: Producers shall finance the waste management in its entirety, including collection [Art. 13(1)].
    - The following is valid for equipment placed on the market before 13. August 2005: Should a producer replace a piece of waste equipment with a new product which is equivalent or fulfils the same function, he or she shall finance the waste management in its entirety. Alternatively, Member States may stipulate that users also be made partly or totally responsible for financing this. [Art. 13(1)].
- ▶ **Producer registers**
  - There shall be national producer registers which can be used to verify whether or not producers comply with their financial obligations [new Art. 16(1)].
  - Each Member State is to collect information from producers on a yearly basis
    - about the quantities and categories of equipment that they placed on their markets, collected, recovered, re-used and recycled, as well as
    - about the weight of the waste equipment collected [new Art. 16(5)].
  - Registers in each Member State must be harmonised (“inter-operable”) so that all relevant information, including that relating to the quantities of equipment placed on the national market can be exchanged and transferred within the EU [new Art. 16(2)].

### Changes Compared to the Status Quo

- ▶ To date, the WEEE Directive has itself defined its scope by establishing 10 categories of equipment (old Annex IA) and putting these into concrete terms using specific products (former Annex IB). The WEEE Directive should now refer to the same ten WEEE categories as the RoHS Directive which is to be recast (new Annex I in this document), but without also explicitly referring to how they are put into concrete terms using specific products (new Annex II in this document).
- ▶ Classification of waste equipment as B2C or B2B has to date been conducted at individual Member State level. It should now be effected by the Commission.
- ▶ According to current law, at least four kilograms of B2C equipment per inhabitant must be collected yearly. The Commission now wants to switch this obligation to a collection rate of 65% for B2C and B2B equipment.

- ▶ The valid WEEE Directive already contains binding rate targets for overall recovery as well as for the preparation of waste equipment for re-use and recycling. These should each be increased by five per cent respectively.
- ▶ To date, national producer registers have been independent of one another. Registration and reporting obligations should now be harmonised and the national registers should be made inter-operable.

### Statement on Subsidiarity

In the view of the Commission, as environmental pollution from waste equipment is a cross-border issue, the management of waste electrical and electronic equipment can only be improved at EU level. In addition, differing national registration and reporting standards obstruct the single market.

### Political Background

The WEEE Directive is closely connected to the RoHS Directive, which should also be recast [cf. Directive Proposal dated 3<sup>rd</sup> December 2008 COM(2008) 809]. The RoHS Directive aims to restrict the use of hazardous substances in electrical and electronic equipment so as to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

### Legislative Procedure

03.12.08 Adoption by Commission

Open Adoption by European Parliament and the Council, publication in the Official Journal, entry into force

### Options for Influencing the Political Process

Leading Directorate General	Environment DG
Committees of the European Parliament:	Environment, Public Health and Food Safety (leading), rapporteur Karl-Heinz Florenz (EPP-ED Group, Germany);
Committees of the German Bundestag:	Environment, Nature Conservation and Reactor Safety (leading); Economic Affairs and Technology
Decision mode in the Council:	Qualified majority (adoption with a majority of the Member States and with 255 of 345 votes; Germany: 29 votes)

### Formalities

Legal basis:	Art. 175(1) of the EC Treaty (environmental policy)
Form of legislative competence:	Concurrent legislative competence
Legislative procedure:	Art. 251 of the EC Treaty (codecision procedure)

## ASSESSMENT

### Economic Impact

#### Ordoliberal Assessment

As waste electrical and electronic equipment contains substances which could have significant harmful effects on the environment and human health if not disposed of in an appropriate manner, official action by the EU is justified.

However, **introducing a minimum collection rate** of 65% and obliging producers to meet this **is not appropriate**, as producers cannot ultimately influence the “returns” behaviour of consumers over and above offering them the option to return waste equipment for free. In view of this, it is inappropriate to force producers to assume responsibility for consumer behaviour.

**Moreover**, linking **the minimum collection rate** to equipment sold in the last two years **is arbitrary**. The average useful life of electrical and electronic equipment is far more than two years, a plausible connection between collection and sales from the preceding two years can therefore not be made.

**The increases in recovery, re-use and recycling rates are also to be rejected**, as producers have no influence over which waste equipment will be returned to them and in what state.

#### Impact on Efficiency and Individual Freedom of Choice

**The harmonisation of national producer registers will ease a considerable burden on producers**, as they will no longer need to provide reports on their activities in all 27 Member States (in extreme cases) according to different procedures and in different languages. This increase in efficiency is to be greatly welcomed. However, it should be reviewed whether or not this could also be achieved through a voluntary harmonisation of national registers. Experience of voluntary harmonisation already exists with the European WEEE Register Network (EWRN). Registration authorities in numerous Member States cooperate with one another within this network.

### Impact on Growth and Employment

**Should individual Member States oblige producers to bear all the costs of collection facilities, this would lead to a significant additional burden** for the companies affected. As it was not possible to take these additional costs into account when selling the equipment, producers would be forced to finance this through price increases on new equipment. This would have a negative impact on growth and employment.

### Impact on Europe as a Business Location

The proposed Directive is location-neutral as it is valid for producers both in EU and non-EU countries.

## Legal Assessment

### Legislative competence:

EU legislative competence for environmental policy measures, and therefore also for the waste management of waste electrical and electronic equipment, is governed by Art. 175(1) of the EC Treaty.

### Statement on Subsidiarity

Unproblematic.

### Proportionality

Producers do not possess the necessary means to force private and commercial users, or distributors of electrical and electronic equipment, to return waste equipment. **Obligations on producers are therefore unsuitable for achieving a minimum collection rate** of 65%. **This requirement infringes the principle of proportionality** according to Art. 5(3) of the EC Treaty, as no one may be obliged to achieve the impossible (*ultra posse nemo obligatur*).

### Compatibility with EU Law

The intended clarification of the scope of the WEEE Directive will not be achieved if reference is only made to the ten general equipment categories in the RoHS Directive to be recast (new Annex I in this directive). Current legal uncertainty will therefore continue to exist: Firstly, referring the WEEE Directive to the RoHS Directive, the legislative competence of which is based on Art. 95 of the EC Treaty, does nothing to alter the fact that Member States can extend the scope to include other products. Secondly, it remains unclear as to whether putting equipment categories into concrete terms by naming specific products, as is the case in the RoHS Directive (new Annex II of this directive), should also be valid for the WEEE Directive. Thirdly, it is not apparent whether or not the Commission's right to "classify" products as B2C or B2B equipment in "regulatory procedures with scrutiny" [new Art. 2(4)] simultaneously gives it the power to subject a product to the scope of the Directive.

### Compatibility with German Law

Implementation of the Directive proposal requires various adjustments of the German Electrical and Electronic Equipment Act (ElektroG). In particular it would mean replacing the current "waste management target" of collecting an average of at least four kilograms of B2C waste equipment per inhabitant per year separately [Section 1(1) of the ElektroG] with the obligation on producers to achieve a minimum collection rate of 65% for B2C and B2B equipment. The registration system would have to be so designed that it be inter-operable with registers in other Member States (Sections 6 and 14 of the ElektroG).

## Alternative Policy Options

As registration for producers still entails considerable expenditure, the introduction of a minimum limit would be desirable. This would ease the burden on producers, particularly small and medium-sized enterprises who only place low quantities of electrical and electronic equipment on the market. This could be complemented through the introduction of a lump sum payment.

## Possible Future EU Action

In view of the severe environmental impact created by cooling and freezing equipment which contains ozone depleting substances and fluorinated greenhouse gases, separate collection rates could be introduced for these products.

## Conclusion

In principle, provisions at EU level relating to the handling of waste electrical and electronic equipment are justified. The introduction of binding minimum rates for the collection, recovery, re-use and recycling of waste electrical and electronic equipment is however inherently inappropriate, as producers have virtually no influence on the attainability of these rates. Forcing producers to take over the costs of collection points would lead to losses of growth and employment. Simplification of the reporting obligations for producers is to be welcomed, as this increases efficiency. However, the introduction of a minimum limit, under which a producer's reporting obligations would be dropped, would also be desirable.