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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 text proposals from **DELETED**

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Scope and related definitions in the WEEE Directive (recast)

SCOPE

Article 2

1. This Directive shall apply to electrical and electronic equipment ~~falling under the categories set out in Annex I of Directive 20xx/xx/EC (RoHS)~~. All electrical and electronic equipment shall be categorized under the categories set out in Annex 1A. Annex 1B contains an indicative list of products which fall under the categories set out in Annex 1A.

2. This Directive shall apply without prejudice to requirements of Community legislation on safety and health on chemicals, in particular Regulation (EC) 1907/2006 as well as of specific Community waste management or product design legislation.

3. This Directive does not apply to any of the following equipments:

(a) Equipment which is necessary for the protection of the essential interests of the security of Member States, including arms, munitions and war material intended for specifically military purposes.

~~(b) Equipment which is specifically designed as part of another type of equipment that does not fall within the scope of this Directive and can fulfil its function only if it is part of that equipment.~~

The non-electric or non-electronic parts of:

- Large scale fixed industrial installations
- Transportation equipment.

~~(c) Equipment which is not intended to be placed on the market as a single functional or commercial unit~~

Components in EEE and accounted as part of this EEE, when placed or made available on the market.

(d) Filament bulbs.

~~(e) Implanted and infected medical devices~~ and medical devices which at the time of disposal shall be considered infectious as a result of their intended use.

4. Electrical and electronic equipment shall be classified as equipment for private households or for users other than private households and WEEE shall be classified as waste from private households or from users other than private households. The classification of types of EEE and WEEE into these categories shall be laid down. This measure designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3). Waste from EEE used by both private and other than private households shall be considered as WEEE from private households. It shall ensure that waste from EEE for users other than private households is diverted from the waste flow from private households. This classification among others shall be based on assessing the share of the equipment sold to private households or businesses.

JUSTIFICATION for proposed changes to Scope

Article 2.1 – the main inclusion criterion

The objective of the proposed changes to Article 2.1 is to make way for a more clear and simple definition in Article 3(a) of electrical and electronic equipment, when the categorisation of EEE is used only for the establishing collection and recovery targets and for the surveillance of the fulfilment of these targets. All electrical and electronic equipment according to the definition in Article 3(a) is included in scope unless specifically excluded later here in Article 2.

Exclusion criterion 2.3(b) and 2.3(c)

The objective with the Commission's exclusion criterion 2.3(b) is in its present form too unclear and is often misinterpreted. Many producers have argued that lots of EEE, even when this EEE is clearly within the directive's main scope, is excluded according to the present 2.3(b), because this EEE is a part of some other equipment that does not fall under the directive (e.g. electronic thermostat working with an otherwise non-electric radiator, computer in a large windmill, electric water heater supplying hot water for a house's bath). Even with the recast's suggested addition to 2.3(b) we foresee misinterpretation and different implementation in the member states (e.g. the computer in the windmill has been programmed to control the windmill and the computer cannot be used as is in other place, - but it is still a common computer just needing reprogramming). The exclusion criterion 2.3(c) in the recast is also unclear in its present form and it can be expected to be misinterpreted in much the same way as for exclusion criterion 2.3(b).

The new proposed text in the exclusion criterion 2.3(b) shall encourage modular design, which is commonly used in the design of large equipment for commercial enterprises already. Introduction of producer responsibility is one of the means of encouraging eco-design and production of electrical and electronic equipment, which take into full account and facilitate repair, possible upgrading, reuse, and disassembly in order to recycle equipment or parts of equipment. The electric and electronic parts in modularised equipment are gathered in separate functional units or modules, which are as far as possible physically separated from other parts of the equipment. By the proposed exclusion of all non-electric and non-electronic parts, the scope will only include distinct EEE within large scale fixed industrial installations or transport equipment. But for the industrial installations or transport equipment that are clearly designed as compact integrated and do not allow easy repair etc (a common design strategy for EEE in private households), the greater part of such industrial installations or transport equipment should be within the scope as well as these are likely to enter the WEEE flow at a later stage.

The new proposed text in the exclusion criterion 2.3(c) is to avoid double counting of components in equipment, which would be equal to double producer responsibility. A typical situation is when a producer claims responsibility for an electric or electronic component and this component is used by a later producer as an integrated part of new EEE. However, the same component used for repair (i.e. spare parts) has to be included in the scope since it is not already accounted for in the producer responsibility for any EEE. Upgrading equipment would normally be regarded as EEE in itself and be covered under the concept of an electric or electronic accessory (or subassembly).

Exclusion criterion 2.3(e)

The suggested revised exclusion criterion is now without doubt including disposable equipment, which is to be incinerated after disposal due to risk of contamination if reused or recycled.

Article 2.4 – classification of dual use equipment

The objective of 2.4 is to clarify there should be a direct correlation between EEE put on the market and WEEE collected divided between equipment for/from private households and equipment for/from other users than private households. In case this direct correlations is not present distortion in competition takes place as collection of WEEE from professional equipment is in practice not mandatory and easily avoided. The objective for distinguishing between equipment for professional use and for private use is that the directive sets different obligations for the two segments, since producers of equipment for private use shall pay the reverse logistics costs connected to the WEEE whereas producers of equipment for professional use can transfer the costs to the buyer by an agreement and will thus have no collection obligations.

Producers of possible dual use equipment shall with the present definition classify all their equipment as professional equipment if only selling to this segment but hereby it is disregarded that even much professional equipment with dual-use characteristics ends in the waste stream from private consumers (e.g. personal computers). In addition, a correct division between amounts sold to private households and to the professional market is very often difficult to estimate and would naturally shift in favour of assuming an exaggerated large share to be sold as professional equipment. The result is that the producers registered for equipment for private use pays for the reverse logistics of dual use equipment which is actually the responsibility of other companies. The main objectives in the classification should be decided politically as it is beyond non-essential elements and not just scientific and technical progress fit for a decision with the suggested regulatory procedure (i.e. in a TAC meeting). Therefore definitions for EEE for and WEEE from private households corresponding to this paragraph 2.4 are proposed in Article 3.

DEFINITIONS

Article 3

For the purposes of this Directive, the following definitions shall apply:

(a) ‘electrical and electronic equipment’ or ‘EEE’ means equipment which is dependent on electric currents or electromagnetic fields in order to work properly ~~and as well as equipment and cables for the generation, transfer and measurement of such currents and fields falling under the categories set out in Annex I of Directive 20xx/xx/EC (RoHS)~~ and designed for use with an input voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current; ~~this includes equipment where the electrical current is used only for support or control as well as equipment which still has a function when the electric current is switched off;~~

(b) ‘waste electrical and electronic equipment’ or ‘WEEE’ means electrical or electronic equipment which is waste within the meaning of Article 3(1) of Directive 2008/xx/EC on waste ~~1(a) of Directive 75/442/EEC~~, including all components, subassemblies, accessories and consumables which are part of the product at the time of discarding;

(l) ‘WEEE from private households’ means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature ~~and quantity~~, is similar to that from private households;

(new) ‘EEE for private households’ means EEE which is intended for private households and for commercial, industrial, institutional and other sources, which because of its nature, is similar to that for private households.

(new) ‘weight of EEE placed or made available on the market’ means the actual weight of the entire equipment in the form in which it is marketed, including all components, subassemblies, accessories and consumables but excluding packaging, batteries, instructions for use and manuals;

(new) ‘weight of WEEE’ means the actual weight of the entire equipment in the form in which it is collected including all components, subassemblies, accessories and consumables but excluding packaging, batteries, instructions for use and manuals;

(new) ‘large scale fixed industrial installation’ means a particular combination of several types of apparatus and where applicable, other devices, which are assembled, installed and intended to be used permanently at a predefined location, and is large scale and industrial;

(new) ‘transportation equipment’ means any equipment used for transport such as airplanes, camping wagons, ships, trailers, trains and vehicles not covered by Directive 2000/53/EC;

(new) ‘accessories’ means any unit used with EEE; an accessory cannot function without the EEE;

(new) ‘consumables’ means any unit used with the EEE where the EEE can not function as intended without the consumable;

(new) ‘components’

(new) ‘subassemblies’

JUSTIFICATION for proposed changes in Definitions

3(a) EEE

It is proposed to specific mention plain cables, which has caused some different interpretation and forms a considerable amount of (W)EEE. Many Member States include cables under the scope today, because it is equipment for the transfer of electric currents. The reference to the categories is suggested to be deleted as justified under Article 2. It is suggested to clarify that it is the input voltage that sets the limit hereby avoiding the misunderstanding of the definition by excluding equipment with an inside voltage exceeding the limit values (e.g. the electric flyswatter that briefly releases a high voltage, despite being driven by two AA batteries) as well as clarifying when to include EEE such as transformers. Finally the objective of the proposed added last sentence is to ensure the inclusion in the scope of EEE, which also has a function when the electricity is off (e.g. talking teddy bears and blinking shoes).

3(b) ‘WEEE’

The addition of ‘accessories’ reflects the suggested new definitions for accessories and consumables (see later) and the actual situation today for the collected WEEE. Very importantly, it also clarifies what to include when defining the weight of EEE put or placed on the marked and this weight should correspond as closely as possible to the weight of the later discharged WEEE.

3(l) ‘WEEE from private households’ and 3(new) ‘EEE from private households’

The objective for the suggested definitions, which only refer to the nature of the (W)EEE and not to share or quantity, is to eliminate today’s problem of dual-use equipment by establishing clarification and simplicity.

(new) ‘weight of EEE placed or made available on the market’ and (new) ‘weight of WEEE’

The goals of the new definitions of weight are to set uniform standards for weight of EEE and WEEE and hereby avoid distortion of competition caused by double standards. These weights are economically very important to all producers and importers when implementing the producer responsibility and should be decided politically and not subject to change by comitology. Uniform standards ensure that data becomes comparable and stays comparable over time and allows the Commission to survey the MS’ fulfilment of targets for collection and recovery for the different EEE categories.

(new) ‘large scale fixed industrial installation’

The definition originates from Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility.

(new) ‘accessories’ and (new) ‘consumables’

The definition ensures the inclusion of products like the examples below, when calculating the weight of EEE and of WEEE, and hereby reflecting common marketing situations today as well as common practice at the later waste collection stage; an accessory will most often be EEE in itself but some can be non-EEE, while the opposite is likely for consumables; some overlapping between the two groups is unavoidable but this should not create practical or administrative problems of any significance; accessory examples: mouse for a pc, upgrading parts like graphic-cards or memory-cards (in some cases), external hard discs or memory sticks, extra plastic cover for a mobile phone; consumable examples: toner cassette for printers or copying machines, CDs for CD players, dust-bags for vacuum-cleaners, wristband for a battery-driven wristwatch;

Comment regarding (new) ‘components’ and (new) ‘subassemblies’

Used in the current directive and in the recast. The Commission might be interested in providing the definitions hereof – also in light of the proposed new definitions for accessories and consumables.

COLLECTION RATE

Article 7

~~3. A common methodology shall be established for the calculation of the total weight of electrical and electronic equipment placed on the national market.~~

~~This measure designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).~~

JUSTIFICATION for the above proposed changes to Article 7 - Collection Rate

The reference in Article 7(3) is not necessary in case the suggested definitions of weight now are established in Article 3.

CATEGORIES OF ELECTRICAL AND ELECTRONIC EQUIPMENT....
ANNEX ...

..... (~~with the exception of large scale stationary industrial tools~~)

LIST OF PRODUCTS WHICH FALL UNDER THE CATEGORIES....
ANNEX ...

....

5. Lighting equipment

Luminaires for fluorescent lamps ~~with the exception of luminaires in households~~

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JUSTIFICATION for the above proposed changes to Annexes on categories and product lists

All exemptions should be mentioned under Scope in Article 2 hereby improving clarity of the directive. Our proposal regarding large scale fixed industrial installations (including the equivalent stationary tools) are dealt with before, and we are at present not in favour of excluding luminaires in households from the scope.
