

**Amended proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment <sup>(1)</sup>**

(2001/C 240 E/36)

(Text with EEA relevance)

COM(2001) 315 final — 2000/0158(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 7 June 2001)*

**1. BACKGROUND**

Transmission of the proposals to the Council and the European Parliament (COM(2000) 347 final — 2000/0158(COD)) in accordance with Article 175(1) of the Treaty: 28 July 2000

Opinion of the Economic and Social Committee: 29 November 2000

Opinion of the Committee of Regions: 14 February 2001

Opinion of the European Parliament — first reading: 15 May 2001

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

The proposal establishes measures on the prevention of waste from electrical and electronic equipment, on the collection of electrical and electronic equipment as well as their treatment, recycling and recovery. It is proposed that Member States set up separate collection of waste electrical and electronic equipment (WEEE) and ensure the proper treatment, recovery and disposal of WEEE. The treatment, recovery and disposal of WEEE shall be financed by producers to create economic incentives to adapt the design of electrical and electronic equipment to the prerequisites of sound waste management. Consumers shall have the possibility to return their equipment free of charge. Quantified targets for reuse, recycling and recovery are set out.

**3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT**

**3.1. Amendments accepted by the Commission**

The following amendments can be accepted:

As regards the scope of the Directive, am. 3 stating that the same obligations applying to producers and distributors have to apply in relation to distant-selling; am. 4 establishing that the WEEE Directive is without prejudice of other legislation on workers-health protection

as well as of Directive 91/157/EEC on batteries; am. 23 stating that the WEEE Directive applies irrespective of how the equipment was serviced; am. 24 including medical equipment systems, monitoring and control instruments as well as automatic dispensers under the scope of certain collection provisions of the Directive; am. 25 stating that 'professional importers' include providers of EEE under finance agreements (e.g. lease).

The Commission can accept am. 22 which deletes the term 'economic' in Article 1.

As regards definitions, am. 27 clarifying that 'reuse' includes both the reuse as whole appliances or as components; am. 28 establishing that the 'producer' is independent on the selling technique used, including distant-selling; am. 29 setting out conditions in order for resellers not to be considered producers.

As regards collection, free take-back and producer responsibility, am. 36 stating that systems to handle waste may be set up by producers individually or collectively.

Concerning recovery, am. 39 increasing the quantified targets for recycling and recovery of WEEE; am. 42 laying down conditions to be taken into account for setting targets for the years beyond 2008; am. 43 calling for the development of new technologies.

As regards financing, ams. 15 and 16 establishing that individual financing systems are to be preferred to collective systems unless unfeasible or too costly.

As regards information requirements, ams. 18, 47 to 50, 51 and 52 extending the obligations on producers as regards information to users; am. 51 providing for possibility for introducing penalties for failure to comply with the separate-collection obligations. Ams. 19 and 54 reinforcing the provision relating to information to be provided to treatment facilities.

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 184.

Finally, am. 10 referring to the potential benefits of the Directive in terms of job-creation; am. 59 establishing that before amending the Annexes, the Commission shall to consult producers, trade unions and consumers associations; am. 60, requiring waste management plans to include a chapter on WEEE; am. 61 requiring Member States to provide for adequate penalties; ams. 20 and 64 requiring Member States to provide for adequate inspection and to rely on the Recommendation on environmental inspections.

Am 63 changes the date of entry into force (day of publication instead of 20th day after publication). This can be accepted.

The Commission can accept am. 66 adding 'leisure and sport equipment' to point 7 of Annex part A.

### 3.2. Amendments accepted in part or principle by the Commission

Concerning definitions, am. 26 on the definition of WEEE reinforces the concept that all components and sub-assemblies are to be considered WEEE as well and can be accepted except for the reference to 'consumables'.

As regards collection, am. 35 establishes a number of obligations. The part prohibiting the disposal of WEEE together with unsorted urban waste can be accepted. The Commission does not find it necessary to accept the part contained in paragraph '1a', referring to the burden on retailers, considering that the possibility of centralised collection points is not excluded anyway. Furthermore, the Commission does not agree to the second part of paragraph 2 allowing Member States to depart from the free take-back provision. As regards paragraph 3, the Commission accepts the amendment in principle but has doubts about the requirement to conduct recovery operations pursuant to certified management systems. The Commission suggests to replace the term required with encouraged. The changes in paragraph 4 can be accepted. In paragraph 5, the reference to the 6 kg/person/year can be accepted in principle. However, the Commission considers that the provision should be reworded as follows: without prejudice to Article 1(a), Member States shall take measures with a view to achieving by 31 December 2005 at the latest a rate of separate collection of 6 kg on average per inhabitant per year of WEEE from private households. The same applies to am. 9 on recital 13.

Am. 30 establishes that in case of distant-selling producers and distributor, the company performing service or main-

tenance in agreement with the producer/distributor is considered to be a 'producer' for the purpose of the Directive. This change can be accepted, although the Commission doubts that they would be necessary.

Am. 32 contains a definition of 'collection facility' and can be accepted in principle. The Commission proposes the following text 'collection facility' means any establishment, including where appropriate retailers, taking back WEEE from the final holder.

The Commission can accept in principle am. 95 subject to the following rewording: 'Member States shall ensure that WEEE liable to present a health and safety risk to personnel, due in particular to radioactive or biological contamination, are taken back in adequate collection facilities.'

As regards treatment requirements, am. 37 establishes that state-of-the-art recovery and recycling systems — to be set up by producers individually or collectively — shall be used. This is acceptable. Also the reference to workers' health protection can be accepted. As regards paragraph 5, this lays down requirements to be complied with in case of export of WEEE. These conditions de facto amend Regulation (EEC) No 259/93 on the shipment of waste. It is not appropriate to derogate from general rules on waste shipments in relation to recovery of WEEE, therefore the amendments should not be accepted. However, the Commission suggests restricting the scope of the provision to shipment for disposal: Member States may oppose to shipments in compliance with Article 4, paragraph 3, letter c, first indent of Council Regulation (EEC) No 259/93, if the minimum quality standards for treatment as laid down in paragraph 1 are not fulfilled.

Finally, am. 37 requires Member States to ensure that economic operators introduce certified environmental management systems. This part is acceptable.

Am. 11 on recital 14 refers to the quality of treatment operations and can be accepted in principle, with the following rewording: any establishment or undertakings carrying out recycling and treatment operations should comply with minimum standards to prevent negative environmental impacts associated with the treatment of WEEE. In the interests of high environmental protection standards Member States should ensure that state-of-the-art recovery and recycling technology is used.

As regard provisions on recovery and recycling, am. 38 requires that all separately-collected WEEE is sent for recovery, except for WEEE to be completely reused, and that the highest possible reuse/recycling rate is achieved. This amendment can be accepted in principle. The Commission suggests the following formulation: 'Member States shall ensure that all separately-collected WEEE is sent for recovery with the view to achieving the highest possible reuse and recycling rate is achieved. Equipment which is completely reused is not covered by this provision'.

Am. 41 establishes that detailed rules for calculating the targets shall be adopted at a later stage and can be accepted in principle. The Commission suggests the following: 'By 31 December 2004 at the latest, the detailed rules for monitoring the targets referred to in paragraph 2 of this Article as well as the compliance by Member States therewith shall be adopted in accordance with the procedure referred to in Article 14(2).'

As regards financing, am. 44 changes the date of entry into effect of the producer responsibility clause (30 months after entry into force of Directive, instead of 5 years). This part can be accepted. It further establishes that producers may be called to finance or co-finance collection from households. This part can only be accepted in principle. The Commission suggests the following wording: 'without prejudice to Article 4(2) Member States shall ensure and, according to the principle of subsidiarity, determine in which way WEEE from private households is transferred to the collection facilities set up under Article 4(1).'

Am. 46 (and am. 17 adding a new recital) establish:

- (a) that costs of collection and treatment must be internalised within the product price. It is not clear how this would legally work, therefore this part is not accepted;
- (b) that already-existing financing agreements may be maintained, for a maximum period of 10 years. This can be accepted in principle, provided that it is stated that the review takes into account also competition aspects;
- (c) that responsibility for historical waste is to be shared according to market share at time of arising of cost. This can be accepted provided the word 'collectively' is deleted;
- (d) that for a maximum period of 10 years, producers are allowed to use 'visible fees' to inform users of costs of collection and treatment. This is not necessary in order

to entitle an individual producer to display his costs to the consumers. This can not be accepted.

As regards reporting requirements, am. 52 establishes that EEE shall be clearly labelled in order to indicate that they were put on the market after the entry into force of the Directive. This amendment can be accepted in principle and suggests the following wording: 'Member States shall ensure that, with a view to the fact that WEEE may no longer be disposed of together with unsorted urban waste and that all WEEE arising must be separately collected, producers appropriately mark electrical and electronic equipment put on the market 30 months after the entry into force of this Directive and which might normally be disposed of in rubbish bins or similar means of municipal waste collection, with the symbol showing in Annex IV ...' (rest unchanged).

Regarding am. 75, the Commission can accept in principle subject to the following rewording: 'Les Etats Membres veillent à ce que tous les producteurs d'un appareil électronique ou électroniques mis sur le marché après le ... [30 mois après l'entrée en vigueur de la présente directive] soit aisément identifiable grâce à l'étiquetage de l'appareil indiquant également la date de mise sur le marché.'

Am. 55 calls on Member States to make sure that producers using distant-selling indicate a company located in a Member State and which is liable to take over the producers' obligations set out in the Directive. This amendment can be accepted in principle, although the provision would need to be put under Article 7(2).

Ams. 21, 56, 58 and 85 deal with the reporting requirements and propose changes which are not very significant. They can all be accepted in principle. The Commission suggests the following wording changes in the respective amendments: On am. 21: 'Information about the numbers and weight of items of electrical and electronic equipment put on the market in the Community and the rates of collection, recovery, reuse (including as far as feasible reuse of whole appliances) and recycling and export of WEEE is necessary to monitor the achievement of the objectives of this Directive.'

On am. 56: 'Member States shall provide to the Commission information on an annual basis on the quantities and categories of electrical and electronic equipment put on the market, collected through all routes, reused, handed over to the treatment facilities, recycled and recovered, within the Member States, as well as on the quantities exported, and information on the technical standard of the recycling, recovery and treatment routes and data on the charges for disposal and the costs of collection and recovery.'

The Commission can accept am. 58 and am. 85 but it suggests not to include the last sentence of am. 85 referring to internet.

As regards other provisions, the Commission can accept am. 2 reworded as follows: 'The guiding principle behind the Directive is the extended producer responsibility, which leads to the internalisation of external costs.'

Am. 6 on recital 11 deals with the design of new EEE and can be accepted in principle but reworded as follows: 'It is necessary to draw up as quickly as possible, provisions concerning the design and manufacture of electrical and electronic equipment to minimise their impact on the environment during their life cycle. The new approach to technical regulations and standards should be taken into account. Member States should encourage the design and production of electrical and electronic equipment which take into full account and facilitates their repair, possibility of being upgraded, reuse, disassembly and recycling'. This redrafting is necessary since the reference to provisions to be adopted by the Commission, laid down in the first part of the amendment, is not acceptable from an institutional point of view. Secondly, the Commission, while accepting the thrust of the amendment, maintains that a mentioning of the new approach is to be kept in the text, and therefore merged the text of the original proposal with the text of the amendment.

Am. 62 sets the transposition deadline of the Directive within 18 months after its entry into force (Commission proposed 30.6.2004). This can be accepted in principle subject to possible review at the time of adoption of the Directive.

As regards Annex II, the Commission can accept in principle ams. 86, 99, 70, 77, 98 but suggest to reword certain additions as follows:

- 'electrolyte capacitors containing hazardous substances'. The Commission suggests to add the reference to hazardous substances since only these types of electrolyte capacitors should be removed from the equipment during the treatment operations;
- 'plastics containing flame retardants'. The Commission considers that this wording is clearer and covers the same scope than the Parliament amendment;
- 'PCB-containing capacitors in accordance with Directive 96/59/EC on the disposal of PCBs and PCTs'. The Commission considers that it is necessary to mention the PCB Directive in order to ensure that the treatment operations are carried out in compliance with this Directive.

However, the Commission cannot accept the following additional indents of the abovementioned amendment:

'lead', 'cadmium', 'hexavalent chromium'. The Commission considers that it would not be feasible in practice to remove all components containing these substances. It is suggested to give in this annex more detailed information on the types of material and equipment to be removed.

As regards am. 71, the Commission can only accept the last part referring to treatment according to Regulation (EC) No 2037/2000. The Commission considers that it is clearer and more useful in practice to mention the names of the gases to be removed instead of a generic description of the gases through certain of their effects (ozone depleting or global warming potential).

As regards Annex III, the Commission can accept am. 100 subject to the following changes, which on the one hand align the text of the present Directive with the text of Directive 2000/53/EC on end of life vehicles (treatment installation will in many cases treat both ELVs and WEEE) and on the other hand takes into consideration some specificities of electrical and electronic waste, such as the risk of explosions:

- Point 1, first indent: 'Impermeable surfaces for appropriate areas with the provision of spillage collection facilities and, where appropriate, decanters and cleanser-degreasers'.
- Point 1, second indent: 'Weatherproof covering for appropriate areas'.
- Point 1, new indent: 'Appropriate equipment for the treatment of water, including rain water, in compliance with health and environmental regulation'.
- Point 2, fourth indent: 'Appropriate containers for storage of batteries, PCB/PCT containing condensers and other hazardous waste such as radioactive or explosive waste'.
- Point 2, fifth indent: 'Equipment for the treatment of water in compliance with health and environmental regulations'.

### 3.3. Amendments not accepted by the Commission

Ams. 7 and 12 refer to protection of workers' health in relation to take-back and treatment. Since this does not add any legal value to the Directive and it does not fit with the scope of the Directive.

Am. 31 and am. 33 contain a definition of 'finance agreement' and of 'individual financing' which the Commission does not find necessary given that these terms appear sufficiently clear even without a specific definition.

Am. 34 contains a definition of 'holder'. A general definition of 'holder' of waste exists already in the waste framework Directive, the amendment should therefore not be accepted.

Am. 40 allows for a lower target to be achieved in case of 'innovative' products which generate other environmental benefits. The Commission fears that this amendment would leave too much room for diverging interpretation and would make it difficult to monitor the achievement of the objectives of the Directive.

Am. 1 on recital 8 refers to harmonisation of terms, scope, collection and objectives and cannot be accepted, since the provisions of the Directive are 'minimum'.

Am. 5 adds a recital that calls for a revision of the battery Directive in connection with this Directive and cannot be accepted, since it does not fall under the scope of the present Directive.

Am. 14 and am. 78 would conflict with the provisions of the Shipment Regulation on Waste, insofar as they would add extra-conditions for allowing waste to be shipped. The Commission is contrary to having a specific shipment regime for electrical and electronic waste.

Am. 72 and am. 99 (part on recycling) on the plastics recycling is not in line with the provisions requiring quantified targets per type of equipment.

Am. 73 and am. 76 would weaken the provisions on selective treatment as they would not allow to perform the operations required under Annex II.

The Commission cannot accept am. 82 since it has accepted am. 15, which provides a clearer text than am. 82.

Am. 68, introducing technical changes relating to some of the entries in Annex I, point 1, cannot be accepted since it would entail an inconsistency with the other points of Annex I.

Am. 87 introduces limits to the reuse of whole appliances which would be difficult to implement and to interpret. In particular, it would be difficult in practice to establish when new products on the market have a clear global environmental advantage in terms of resources consumption, since the use of better performing equipment will have to be weighted against the generation of more waste.

Am. 90 and am. 94 provide for the set up of a network of reuse installations which would be difficult to implement, since reuse of equipment is not a disposal operation and does not necessarily depend on the availability of installations.

The Commission cannot accept am. 93 since it has accepted am. 45, which makes it superfluous.

The Commission does not consider necessary am. 96 on indicators of recyclability potentials and considers that the choice on how to provide information should be left to the Member States.

#### 3.4. Amended proposal

Having regard to Article 250, paragraph 2, of the EC Treaty, the Commission modifies its proposals as indicated above.

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