



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.4.2003
COM(2003) 219 final

2003/0084(COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2002/96/EC on waste electrical and electronic equipment

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1. Overview of the financing obligations under the Directive on waste electrical and electronic equipment

The European Parliament and the Council recently adopted Directive 2002/96/EC on waste electrical and electronic equipment (WEEE)¹. This directive provides for the collection and environmentally sound treatment of WEEE.

The financing of collection², treatment, re-use, recovery and environmentally sound disposal of WEEE is to be provided by producers of electrical and electronic equipment. The Directive distinguishes between **household** and **non-household** waste on the one hand and **'new'** and **'historical' waste**, on the other hand. 'New' waste is waste from products put on the market after 13 August 2005. 'Historical' waste is waste from products put on the market before that date.

For the financing of **'new' waste**, producers are responsible on an individual basis. This applies *both to household and non-household* sources³.

For the financing of **'historical' waste**, there is a difference between household and non-household sources.

- For **'historical' household** waste, the financing is to be provided by "... all producers, existing on the market when the respective costs occur, contribut[ing] proportionately, e.g. in proportion to their respective share of the market by type of equipment."⁴
- For **'historical' waste from non-household** sources, "the financing of the costs shall be provided for by producers. Member States may, as an alternative, provide that users other than private household also be made, partly or totally, responsible for this financing. Producers and users other than private households may, without prejudice to this Directive, conclude agreements stipulating other financing methods."⁵

This means that for historical *household* waste, collective schemes apply where producers of new products pay for the financing of old products. For historical waste from *non-household* sources, in principle an individual system applies where producers of old products pay for the financing of their products put on the market in the past⁶.

¹ OJ L 37, 13.2.2003, p. 24.

² The financing obligation of producers for the collection of equipment from *private* households only applies from the collection point onwards.

³ Directive 2002/96/EC on waste electrical and electronic equipment, Art. 8(2) and Art. 9, first paragraph; OJ L 37, 13.2.2003, p. 24.

⁴ Directive 2002/96/EC on waste electrical and electronic equipment, Art. 8(3); OJ L 37, 13.2.2003, p. 24.

⁵ Directive 2002/96/EC on waste electrical and electronic equipment, Art. 9, second paragraph; OJ L 37, 13.2.2003, p. 24.

⁶ This only applies for the option described in this paragraph, i.e. if producers pay and users are not made responsible and no other financing agreements have been concluded. However, as the alternative

The following sections only concern historical waste from non-household sources.

1.2. The effects of the financing rules on historical waste from non-household sources.

The take-back obligation for waste equipment put on the market in the past creates a retroactive liability for which no provision was made. The burden will vary depending on the volumes of equipment companies sold in the past. It will particularly be heavy for companies which sold high volumes and whose sales are going down. New companies will not bear any obligation.

Concern has been expressed that, depending upon the size of the liability, companies already in difficulties might be forced into insolvency. Any such liability will be reflected in the accounts of the companies concerned.

2. THE DEBATE IN THE EUROPEAN PARLIAMENT AND THE COUNCIL

The original Commission proposal⁷ left the financing of historical waste from non-household sources to “agreements between producers and users of the equipment at the time of purchase.” During the first reading, this provision was changed into a formulation stipulating that “the financing of the costs of management shall be provided for by producers.” At that time, this was acceptable to all institutions.

Only during the final stages of the adoption of the WEEE Directive was the attention of the institutions drawn to the financing implications of Art. 9 of this Directive. As no second reading amendment was made on this article, it was impossible to change the text at that stage. However, the European Parliament, the Council and the Commission agreed on a Joint Declaration⁸:

"Noting that concerns have been raised about the possible financial implications for producers of the present wording of Article 9, the European Parliament, the Council and the Commission declare their common intention of examining these issues at the earliest opportunity. Should these concerns prove to be founded the Commission states its intention to make a proposal to amend Article 9 of the Directive. The Council and the Parliament undertake to act expeditiously on any such proposal in accordance with their respective internal procedures."

This proposal follows up this declaration.

3. TIMING OF THIS PROPOSAL

The Council, Parliament and Commission underlined the need to examine this issue at the earliest opportunity. This urgency is based on the need to adopt this revision before the WEEE Directive is transposed into Member States legislation, i.e. before 13 August 2004.

options are only 'may'-provisions and do not change the fundamental obligation of producers, these alternatives are not considered in the following.

⁷ Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment; COM(2000) 347, OJ C 365 E, 19.12.2000, p. 184.

⁸ OJ L 37, 13.2.2003, p. 39.

Otherwise, all national legislation adopted by then would have to be revised. This urgency is also one of the reasons why the Commission did not undertake a separate study.

4. THE PROPOSED REVISION

4.1. Scope of the revision

This proposal is limited to clarifying the rules applying to the financing of historical waste from non-household sources in Article 9, so as to avoid the concerns raised in relation to the implications. The proposal does not alter any of the rules applying to household sources nor the individual responsibility applying to the financing of new waste from non-household sources nor any other aspect of the WEEE Directive.

4.2. Content of the revision

The proposal changes the responsibility to finance historical waste from non-household sources from producers of the waste equipment to producers supplying a new product, where such a new product exists. For historical waste that is not replaced by new products, the users other than private households shall be responsible. This is done by amending the first sentence of the second paragraph of Article 9 of the WEEE Directive, as adopted by the European Parliament and the Council to read as follows.

“Member States shall ensure that, by 13 August 2005, for WEEE from products put on the market before 13 August 2005 (historical waste), the financing of the costs of management is as set out in the [following two] subparagraphs.

For historical waste being replaced by equivalent products or by products fulfilling the same function, the financing of the costs shall be provided for by producers of those new products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

For other historical waste, the financing of the costs shall be provided for by the users other than private households.”

4.3. Reasoning for the proposed revision

At the time of conciliation, the main argument brought forward by industry was that accounting rules may have the effect of requiring accruals reflecting the financing obligation to be settled in the future as historical equipment becomes waste. Fears were expressed that this might endanger the financial viability of companies already in difficulty. It should be noted that the recognition of accruals (or not) will not affect the actual cash flows resulting from the financing obligations. These are fixed by the obligations and not by the subsequent accounting, which merely reflects the obligations that exist. Accordingly, it is these financing obligations which are the focus of this proposal.

In order to eliminate a disproportionate burden on some companies with a large market share in the past, the responsibility for financing the take back of historical equipment has been revised and no longer lies with the producer of the waste equipment.

In this proposal, this is done by changing the responsibility from the producer of the waste equipment to the producer of new equipment when selling a new product that replaces products of equivalent type or fulfilling the same function. This will limit the financing implications for producers to the costs for waste equipment taken back when a new product is sold. Therefore, these costs will only occur if companies sell new products. In addition, there may also be historical waste for which there is no replacement by new products. In this case, the users other than private households will be responsible for financing the take back costs. These changes will also eliminate the problem of orphan waste from companies which no longer exist.

This change of responsibility may be perceived as being in contradiction to the polluter pays principle. It should be noted, however, that at the time when historical waste was put on the market, there was no legislation implementing the polluter pays principle in the sense of the rules for new equipment of Directive 2002/96/EC. Therefore, it may be correct that the past legislative situation was in contradiction to the polluter pays principle. However, it is difficult to distinguish whether the producer or the user is the polluter. It is therefore debatable whether attributing a liability to the producer of original equipment is a correct implementation of the polluter pays principle. Whatever view is taken on this, it will be impossible to correct this situation without creating a retroactive liability with all consequences described above. In summary, the proposal is no more against the polluter pays principle than the past legal situation and the choice is either to accept this historical bias or to create a retroactive liability with all the consequences described above.

The proposal will not have any impact on design incentives as it only covers waste from products already sold and in use before the financing obligations of the WEEE Directive take effect.

4.4. Subsidiarity

The proposal leaves the detailed arrangements to Member States. This also includes the possibility for Member States to set more detailed rules on the responsibilities of users to prepare the collection of equipment. As long as the general principles of financing are harmonised, no major distortions of competition within the Internal Market are expected. Therefore, the principle of subsidiarity should apply.

5. ECONOMIC, ENVIRONMENT AND SOCIAL IMPLICATIONS OF THE DIRECTIVE

5.1. Evaluation of economic costs and benefits and impacts on business

The proposed revision is expected to lower the costs of implementing the WEEE Directive slightly by eliminating the disproportionate financial burden that companies with a declining market share might face as a result of their obligations under the current version of Article 9.

The overall cost of financing the collection, treatment, re-use, recovery and recycling of historical waste from non-household sources is unlikely to change substantially. In the original Commission proposal⁹, the costs for these operations were estimated at around 100-200 million € per year for the EU 15. Assuming an average lifetime of 10 to 20 years,

⁹ Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment; COM(2000) 347, OJ C 365 E, 19.12.2000, p. 184.

liabilities under Art. 9 of the current version of the WEEE Directive could amount to between 1 and 4 billion €. It should be underlined, though, that this is a rough estimate as there is very little information on the collection and recycling costs of non-household equipment.

5.2. Evaluation of environmental benefits

The environmental benefits will not change compared to the current version of the WEEE Directive. This is because the proposal will only affect the way financing is provided for historical waste from non-household sources.

5.3. Social aspects

The proposal might avoid the potential loss of employment which might be the indirect effect of disproportionately burdensome obligations for companies which had a larger market share in the past.

5.4. Evaluation of impacts on Acceding and Candidate Countries

The Directive is expected to reduce economic and social costs of Directive 2002/96/EC in Acceding and Candidate Countries in the same way as for the current Member States. It is expected to be neutral for environmental aspects.

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amending Directive 2002/96/EC on waste electrical and electronic equipment

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission¹⁰,

Having regard to the opinion of the European Economic and Social Committee¹¹,

Having regard to the opinion of the Committee of the Regions¹²

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹³,

Whereas:

- (1) During the adoption procedure concerning Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment¹⁴ concerns were raised about the possible financial implications of the wording of Article 9 of that Directive for producers of the equipment concerned.
- (2) At the meeting of the Conciliation Committee of 10 October 2002 on that Directive the European Parliament, Council and Commission expressed their intention in a Joint Declaration to examine the issues relating to Article 9 of Directive 2002/96/EC, concerning financing in respect of waste electrical and electronic equipment from users other than private households, at the earliest opportunity.
- (3) In accordance with the Joint Declaration the Commission has examined the financial implications for producers following from the actual wording of Article 9 of Directive 2002/96/EC, and has found that the take-back obligation for waste equipment put on the market in the past creates a retroactive liability for which no provision was made and which is likely to expose certain producers to serious economic risks.

¹⁰ OJ C [...], [...], p. [...].

¹¹ OJ C [...], [...], p. [...].

¹² OJ C [...], [...], p. [...].

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ L 37, 13.2.2003, p. 24.

- (4) In order to prevent such risks the financial responsibility for the collection, treatment, re-use, recovery and recycling of waste equipment from users other than private households put on the market before 13 August 2005 should be borne by producers when supplying new products replacing products of equivalent type or fulfilling the same functions. Where such waste is not replaced by new products, the users should be responsible. Member States, producers and users should have to possibility to make alternative arrangements.
- (5) Directive 2002/96/EC should be amended accordingly.
- (6) Following Article 17 of Directive 2002/96/EC Member States must bring into force the laws, regulations and administrative provisions necessary to comply with that Directive by 13 August 2004. In order to prevent the need to amend Member States legislation adopted by that date, this Directive should be adopted as soon as possible and implemented in Member States legislation at the same time as Directive 2002/96/EC.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Article 9 of Directive 2002/96/EC is replaced by the following:

"Article 9

Financing in respect of WEEE from users other than private households

1. Member States shall ensure that, by 13 August 2005, the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households from products put on the market after 13 August 2005 is to be provided for by producers.

Member States shall ensure that, by 13 August 2005, for WEEE from products put on the market before 13 August 2005 (historical waste), the financing of the costs of management is as set out in the third and fourth subparagraphs.

For historical waste being replaced by equivalent products or by products fulfilling the same function, the financing of the costs shall be provided for by producers of those new products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

For other historical waste, the financing of the costs shall be provided for by the users other than private households.

2. Producers and users other than private households may, without prejudice to this Directive, conclude agreements stipulating other financing methods.”

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 13 August 2004. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President