

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council amending Directive 2002/96/EC on waste electrical and electronic equipment'

(COM(2003) 219 final — 2003/0084 (COD))

(2003/C 234/20)

On 13 May 2003, the Council, acting in accordance with Article 175 of the Treaty establishing the European Community, decided to consult the European Economic and Social Committee on the above-mentioned proposal.

On 13 May 2003, the Economic and Social Committee Bureau instructed the Section for Agriculture, Rural Development and the Environment to prepare the Committee's work on the subject.

Owing to the urgent nature of the opinion, the 401st Plenary Session of the Economic and Social Committee of 16 and 17 July 2003 (meeting of 17 July) appointed Mrs Cassina as rapporteur-general and, at its meeting on 17 July, adopted the opinion by 65 votes to none, with one abstention.

1. Introduction and gist of the proposal

1.1. Directive No 2002/96/EEC on waste electric and electronic equipment (WEEE) governs the collection and environmentally sound treatment of products ranging from large industrial machines to small household appliances (washing machines, refrigerators, toasters, hairdryers etc.), including IT and telecommunication equipment (PCs, printers, telephones) and even mobile telephones. The legal basis can be found in Article 175(1) of the Treaty, and on the basis of the precautionary principle, the aim of the Directive is to ensure that the equipment referred to and/or their components are disposed of or recycled in an environmentally sound manner.

1.2. On 29 April 2003 ⁽¹⁾, the Commission proposed amending the directive that had been adopted only a few months earlier by the European Parliament and by the Council ⁽²⁾. The proposal for an amendment tabled so soon after adoption was justified as follows:

1.2.1. During the final stages of adoption, it became clear that an amendment to Article 9 (approved at first reading) gave sole responsibility to the producers ⁽³⁾ of electrical and electronic equipment (EEA) supplied to non-household sources for disposing of EEA that has been discarded or replaced by the latter.

1.2.2. In procedural terms, since no amendment had been tabled during the final stage of the decision-making process, it was impossible to amend Article 9 at the adoption stage.

1.2.3. To remedy the problems associated with implementing Article 9, the European Parliament, the Council and the Commission issued a joint declaration ⁽⁴⁾ recognising the need for a prompt amendment to the Directive before the deadline for transposition by the Member States was reached, i.e. before 13 August 2004.

1.3. The amendment only concerns WEEE from non-household sources.

1.3.1. The proposed amendment transfers responsibility for financing the collection, treatment, recycling and disposal of WEEE put on the market before 13 August 2005 (historical waste) and replaced by producers, to producers of new products when supplying replacements. As an alternative, Member States may provide that users be made partly or wholly responsible for this financing.

1.3.2. For waste that is not replaced, users are responsible for financing the costs.

2. Comments

2.1. Directive 2002/96/EEC is very important in that it takes a coherent approach, in line with other pieces of environmental legislation, to tackling the risks posed by products that are becoming increasingly widespread in daily life, both in the home and in the workplace. In addition, before

⁽¹⁾ COM(2003) 219 final.

⁽²⁾ OJ L 37 of 13.3.2003, p. 24. See also the EESC opinion OJ C 116 of 20.4.2001.

⁽³⁾ Article 9 states that: 'for WEEE from products put on the market before 13 August 2005 (historical waste), the financing of the costs of management shall be provided for by producers'.

⁽⁴⁾ Appended to the Directive.

this Directive, over 90 % of WEEE was either dumped, incinerated or re-used without adequate prior treatment to reduce the risk of pollution. The EESC therefore stresses that the proposed amendment must be examined with the key environmental aim of the Directive firmly in mind⁽¹⁾.

2.2. The proposed amendment is logical since it seeks to avoid a situation in which EEE producers alone are responsible for costs that risk compromising the economic livelihood of firms that might have lost market share over the years and are experiencing economic difficulties. It is, however, a logic that reflects market concerns rather than environmental objectives.

2.3. In this respect, the EESC notes that, in the case of non-replacement, the responsibility for all costs would lie with users and could create some problems, for example, if non-replacement were caused by bankruptcy of an enterprise, cessation of production due to *force majeure*, or non-compliance on the part of the owner, etc.

2.3.1. In the specific case of cessation of production or activities due to *force majeure* and if the user cannot be required to cover the costs, it would not only be unfair to impose additional costs on businesses already facing difficulties, but it could create a significant environmental hazard during the delay in finding some as yet unidentified players to dispose of the WEEE in question. The EESC believes that in this case, Member States should be responsible for ensuring environmentally sound waste disposal.

2.4. The EESC notes that Member States are given the freedom to make provisions for, in the case of replacement, users to be partly or wholly responsible for financing the

⁽¹⁾ See opinion on Directive 2002/96 (OJ C 116 of 20.4.2001, pp. 38-43) for its broadly positive comments and assessment.

treatment of WEEE. The Committee observes that significant differences in provisions between Member States could in some cases lead to distortions in competition, since the situation could arise where users in one Member State are fully exempt from costs whilst users in another Member State are fully responsible.

2.5. The Directive also gives producers and users the freedom to conclude agreements stipulating other financing methods⁽²⁾. The EESC therefore notes that the Directive appears to be advocating different approaches to identifying responsibility and respective degrees of liability.

3. Conclusions

3.1. In view of the above comments, the EESC considers that it would be advisable not to offer too many options, and that co-responsibility between producers and users should be the only permissible method, albeit allowing for variation in the percentage share of responsibility. Accordingly, the EESC believes it would be more equitable, transparent and environmentally sound if the amendment simply provides for co-responsibility for producer and user, including for historical waste, since the method for applying co-responsibility will be clearly laid out in purchase agreements for all products bought after 13 August 2005.

3.2. In any event, when it comes to implementing the Directive, the EESC urges the Member States to ascertain that liability is set out clearly and allocated equitably, since achieving the environmental objectives of the Directive will be greatly facilitated if there is a clearly accepted definition of the arrangements for co-responsibility.

⁽²⁾ Article 9(2) of the proposal.

Brussels, 17 July 2003.

The President
of the European Economic and Social Committee
Roger BRIESCH