



2023/0025(COD)

13.6.2023

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
amending Directive 2012/19/EU on waste electrical and electronic equipment
(WEEE)
(COM(2023)0063 – C9-0016/2023 – 2023/0025(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Anna Zalewska

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act**Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) (COM(2023)0063 – C9-0016/2023 – 2023/0025(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0063),
 - having regard to Article 294(2) and Article 192 paragraph 1 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0016/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 22 March 2023¹,
 - having regard to the opinion of the Committee of the Regions of [...] ²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive
Recital 3 a (new)

¹ OJ C 184, 25.5.2023, p. 102.

² Not yet published in the Official Journal.

Text proposed by the Commission

Amendment

(3a) Articles 8 and 14 of Directive 2008/98/EC of the European Parliament and of the Council^{1a} are the relevant overarching provisions which govern the rules on the environmentally sound management of disposal of WEEE from photovoltaic panels and waste from open scope EEE which are not included within the scope of Directive 2012/12/EU. Article 8 concerns extended producer responsibility (EPR) and Article 14 concerns the costs entailed.

^{1a} **Directive 2008/98/EC of 19 November 2008 the European Parliament and of the Council on waste (OJ L 312, 22.11.2008, p. 3).**

Or. en

Justification

Directive 2008/98/EC is the general waste directive, which, for clarity purposes, would be pertinent to have introduced the EPR and the waste directive in a recital preceding its effect in the context of the WEEE directive revision.

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

(4) On 25 January 2022, the Court of Justice of the European Union, in its **judgement** in case C-181/20⁷, declared Article 13(1) of Directive 2012/19/EU invalid in so far as it concerns photovoltaic panels placed on the market between 13 August 2005 and 12 August 2012, by reason of non-justified retroactive effect. The Court held that because prior to the adoption of Directive 2012/19/EU, the EU legislature left Member States, pursuant to

Amendment

(4) On 25 January 2022, the Court of Justice of the European Union, in its **judgment from the Grand Chamber of the Court** in case C-181/20⁷, declared Article 13(1) of Directive 2012/19/EU invalid in so far as it concerns photovoltaic panels placed on the market between 13 August 2005 and 12 August 2012, by reason of non-justified retroactive effect. The Court held that because prior to the adoption of Directive 2012/19/EU, the EU legislature

Article 14 of Directive 2008/98/EC *of the European Parliament and of the Council of 19 November 2008 on waste*⁸, the choice of requiring the costs relating to the management of waste from photovoltaic panels to be borne by current or previous waste holders or by the producer or distributor of the photovoltaic panels, and subsequently established a rule, in Article 13(1) of Directive 2012/19/EU under which those costs must in all Member States be borne by producers, including in relation to products the latter had already placed on the market at a time when the former legislation was in force, the latter rule must be regarded as applying retroactively, and is therefore liable to infringe the principle of legal certainty. The Court held that such retroactivity applies as regards photovoltaic panels placed on the market prior to the entry into force of Directive 2012/19/EU, on 13 August 2012.

left Member States, pursuant to Article 14 of Directive 2008/98/EC ■ the choice of requiring the costs relating to the management of waste from photovoltaic panels to be borne by current or previous waste holders or by the producer or distributor of the photovoltaic panels, and subsequently established a rule, in Article 13(1) of Directive 2012/19/EU under which those costs must in all Member States be borne by producers, including in relation to products the latter had already placed on the market at a time when the former legislation was in force, the latter rule must be regarded as applying retroactively, and is therefore liable to infringe the principle of legal certainty. The Court held that such retroactivity applies as regards photovoltaic panels placed on the market prior to the entry into force of Directive 2012/19/EU, on 13 August 2012.

⁷ Judgment of the Court (Grand Chamber) of 25 January 2022 (request for a preliminary ruling from the Nejvyšší soud – Czech Republic) – VYSOČINA WIND a.s. v Česká republika – Ministerstvo životního prostředí (Case C-181/20), OJ C 222, 6.7.2020

⁷ Judgment of the Court (Grand Chamber) of 25 January 2022 (request for a preliminary ruling from the Nejvyšší soud – Czech Republic) – VYSOČINA WIND a.s. v Česká republika – Ministerstvo životního prostředí (Case C-181/20), OJ C 222, 6.7.2020

⁸ *OJ L 312, 22.11.2008, p. 3–30*

Or. en

Justification

Emphasising that the Judgement of the Court came from the Grand Chamber is intended to subtly but clearly convey the importance of preventing future instances of unjustified retroactivity in future revisions of existing legislation as well as introduction of new legislation, particularly where costs and implications are involved.

Amendment 3

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) *In order to maintain the principle of legal certainty in future revisions of Directive 2012/19/EU, it is important to pay particular attention to preventing any provisions that could potentially have unjustified retroactive effects. It is necessary to provide clarity and predictability for EEE producers, thereby inhibiting them from encountering unexpected changes to the operating conditions that were in effect when their products were placed on the market. That approach helps to avoid the risk of incurring unpredictable costs associated with future WEEE management.*

Or. en

Justification

The principle of legal certainty should be strictly adhered to, and the circumstances revolving the Court ruling and the targeted amendment to the WEEE directive, should be highlighted, to prevent future repetitions of such situations.

Amendment 4

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) *As such, a review of Directive 2012/19/EU, having incorporated the targeted amendments to adjust to the Court judgment in Case C-181/20, should begin to take place shortly after transposition by Member States, and no later than the end of 2025.*

Or. en

Justification

The WEEE directive, besides the targeted revision of implementing the Court ruling, is already anticipated to be revised in the upcoming years (around halfway through the next Parliamentary term). However, it would be beneficial to set out a provision with more precise

timing and making a reference to this targeted WEEE directive revision - all the more so in the context of ensuring predictability and clarity.

Amendment 5

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) When revising Directive 2012/19/EU, and when taking into consideration the "polluter pays" principle, it is crucial to ensure that the costs of managing WEEE are not transferred to consumers or citizens.

Or. en

Justification

The consumer and the citizen ought to be protected from additional costs resulting from changes in the WEEE directive.

Amendment 6

Proposal for a directive

Article 1 – paragraph 1 – point 2 a (new)

Directive 2012/19/EU

Article 13 – paragraph 1 – subparagraph 2

Present text

Amendment

For historical waste being replaced by new equivalent products or by new products fulfilling the same function, ***the financing of the costs*** shall be provided for by producers of those 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

The financing of the costs from historical WEEE ('historical waste'), resulting from EEE as referred to in Article 2(1)(a) other than photovoltaic panels, which is being replaced by new equivalent products or by new products fulfilling the same function, shall be provided for by producers of those 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.

Or. en

(02012L0019)

Justification

This amendment provides some minor restructuring of the text of the first paragraph, second sub-paragraph in Article 13 of the WEEE directive for clarity. Moreover, it specifies that the provisions of costs for historical WEEE specifically is for WEEE as in Article 2 paragraph (1) point (a) other than photovoltaic panels. Clarifying this intends to provide more certainty that the Court ruling has been fully implemented in this revision of the WEEE directive. Article 2 paragraph (1) point (a) covers EEE from 13 August 2012 to 14 August 2018 (transitional period), to EEE falling within the categories set out in Annex I (where Annex II contains an indicative list of EEE which falls within the categories set out in Annex I). The first paragraph, second and third sub-paragraphs of Article 13 had not been addressed in the Commission's proposal of the targeted revision of the WEEE directive, however, to ensure consistency and coherence, this clarification would be helpful.

Amendment 7

Proposal for a directive

Article 1 – paragraph 1 – point 2 b (new)

Directive 2012/19/EU

Article 13 – paragraph 1 – subparagraph 3

Present text

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

Amendment

For other historical waste **resulting from EEE as referred to in Article 2(1)(a) other than photovoltaic panels**, the financing of the costs shall be provided for by the users other than private households.

Or. en

(02012L0019)

Justification

This amendment seeks to follow up to ensure coherence with the changes made to the second sub-paragraph.

Amendment 8

Proposal for a directive

Article 2 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**one year** after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**two**] **years** after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

Justification

The period of transposition for Member States to bring about the implementation of the targeted directive revision in national law and all the administrative processes needs to be realistic. One year, as in the Commission proposal, is too early. Two years, as a tentative timeline, is likely to be more practical for Member States to ensure the complete and full transposition of the targeted amendment to the WEEE directive, addressing any potential retroactivity.

Amendment 9

Proposal for a directive
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

No later than [31 December 2025], the Commission shall assess the need, and where appropriate, present a legislative proposal on the revision of Directive 2012/19/EU accompanied by a thorough impact assessment. The legislative proposal shall specifically ensure that the principle of legal certainty is adhered to and that there is no provision that could entail unjustified retroactive effect in any Member State. The proposal shall also ensure that citizens or consumers are not burdened with additional costs.

Or. en

Justification

The WEEE directive has been functioning for two decades, and it is generally functioning

well, with the exception of the retroactivity matter at hand. Nevertheless, as a general update is anticipated in the coming years, besides this targeted revision of implementing the Court ruling, a provision with more precise timing would be beneficial. In this, the timeline would be in relation to this targeted WEEE directive revision, whilst ensuring Member States have sufficient time for transposition as in Article 2 paragraph 1, is compatible. In the update, needs to be emphasised that ensuring predictability and clarity is vital so that future scenarios of unjustified retroactivity are avoided, as well as the key notion of avoiding the transfer of burdens and costs onto citizens and consumers.

EXPLANATORY STATEMENT

The Parliament's Rapporteur, Mrs. Anna Zalewska MEP, intends to ensure that the targeted revision of the waste electrical and electronic equipment (WEEE) directive implements the Judgment of the Court of Case C-181/20 into the existing WEEE directive fully and accurately, nothing more, nothing less. As such, the Rapporteur has strived to make the Draft Report as concise and to-the-point as possible.

The Commission's proposal for the targeted revision of the WEEE directive to implement the Court ruling is generally well-prepared, and the provisions do properly address the matter at hand. As such, the Rapporteur's amendments in the Draft Report aim to mostly do two things:

(1) **provide more clarity** to the changes, where it would be useful, as the matter is not immediately obvious, as well as provide changes to other parts of the existing WEEE directive to **ensure consistency and coherence**;

(2) highlight the need to respect the principle of legal certainty and introduce provisions which would ensure the **prevention of future instances of unjustified retroactivity**, particularly in the anticipating upcoming overall revision of the WEEE directive.

Before the adoption of the current WEEE directive i.e. Directive 2012/19/EU of 4 July 2012, the rules concerning the environmentally sound disposal of WEEE had been covered by the general waste directive i.e. Directive 2008/98/EC. The role of Directive 2008/98/EC in this context is explained in Recital 4. Hence, clarification would be pertinent in a new preceding recital, namely introducing the waste directive, and specifically its Articles 8 and 14, which concern the Extended Producer Responsibility (EPR) as well as the costs.

With regard to the changes to Article 12 of the WEEE directive, **the Rapporteur has opted to keep the Commission's proposal of changes to Article 12 and to make no additional changes to Article 12. The Commission's proposal is clear and properly implements the changes needed as required by the Court ruling.** It would follow the same logic that the Court ruling had followed in its evaluation of Article 13, and this ensures the more complete and full implementation of the ruling.

In this, the **remaining two sub-paragraphs of Article 13** (paragraph 1 of Article 13) should also be modified for consistency. In this, the Rapporteur's amendment specifies that the provisions of costs for historical WEEE specifically is for WEEE as in Article 2 paragraph (1) point (a) but not including photovoltaic panels.

Article 2 paragraph (1) point (a), as in the existing WEEE directive, covers EEE **from 13 August 2012 to 14 August 2018**, which is the subject transitional period. The type of EEE are elaborated in Annex I and Annex II of the existing WEEE directive.

Indeed, **photovoltaic panels were the only new EEE added to the scope between 2002 and 2012**, as of application of the current WEEE Directive as it entered into force on 13 August 2012. Comparing the original scopes of application of both directives, which can be done by comparing Annex IB of the original / former WEEE Directive from 2002, and Annex II of the

current WEEE Directive, it can be observed that photovoltaic panels are the only new category of equipment that appeared on the list between 2002 and 2012.

The existing WEEE Directive, specifically Article 2 paragraph 1 point (b), maintains that, the “open scope EEE”, as of **15 August 2018**, should apply (with certain exceptions) to all EEE. Hence, as of 15 August 2018, instead of applying only to EEE listed in Annex II, the WEEE Directive started applying to all EEE as an all-encompassing category, in the same way it did for photovoltaic panels, using the cut-off date of ‘placing on the market after 13 August 2005’. Therefore, the Commission’s proposal **appropriately corrects this retroactivity**, and the Rapporteur **further clarifies and ensures consistency** in this amendment in Article 13.

A general update of the WEEE directive is anticipated in the coming years, independently of this targeted revision of specifically implement the Court ruling. Having functioned since 2002, the WEEE directive is generally seen to be harmonious and well functioning, with the exception of the retroactivity matter at hand. As such, it would be useful - especially in the pursuit of highlighting the principle of legal certainty - to provide a more specific time frame for the revision, which would be shortly after the transposition of the targeted revision of the WEEE directive that implements the Court ruling.

The Rapporteur has tentatively put in by the end of 2025, as this would be compatible with the period needed for the transposition time by Member States as laid out in Article 2 paragraph 1. The period of transposition for Member States to bring about the implementation of the targeted directive revision in national law and all the administrative processes needs to be practically implementable. As such, the Rapporteur has tentatively extended the transposition period for Member States from one year to two years. This is needed to ensure the complete and full transposition of the targeted amendment to the WEEE directive, addressing any potential retroactivity.

In the update, it needs to be emphasised that ensuring predictability and clarity is vital so that future scenarios of unjustified retroactivity are avoided - that is, besides the fact that the Judgement of the Court is from the Grand Chamber, which signals a degree of importance placed on this in future EU law-making practises. Furthermore, the key notion of avoiding the transfer of burdens and costs onto citizens and consumers, an overarching priority for the Rapporteur, have been explicitly included in the amendments of introducing these provisions.

References to Article 14 and Article 15, which pertain to the European Standard EN 50419:2022, have been left unchanged from the Commission proposal in the Draft Report.

At the time of writing the Draft Report, no further changes have been deemed necessary by the Rapporteur to the Commission proposal.

