WORKSHOP ON EU LEGISLATION

WASTE

The Directive on Waste Electrical and Electronic Equipment (WEEE)

2012 – European Commission
Pictures on slides 3 and 4: The first picture shows computer screens at an illegal storage site near Frankfurt am Main which were about to be exported to Africa (copyright Regierungspräsidium Darmstadt). The second picture was taken in Lagos/Nigeria and shows不可读的电子废物被丢弃在湿地附近（版权所有：Basel Action Network 2005）。
Background / current situation

... and where it (often) ends.

Photo: BAN, “The Digital Dump” (Lagos/Nigeria, 2005)

The estimated waste quota in exports of electrical and electronic equipment (EEE) is drawn from various sources, especially reports of IMPEL-TFS and the Basel Action Network (BAN). The BAN report “Digital Dump” of 2005 estimated that up to 75% of the computers arriving in Nigeria are non-reusable “junk”; http://www.ban.org/BANreports/10-24-05/documents/ExecutiveSummary.pdf, p. 2).

The Commission’s figures on discarding of WEEE per capita highlight that at least in the first years after the accession of Central and Eastern European states to the EU (2004) the average discarding quota in the 10 new Member States was considerably lower (6-12 kg p.c.) than that in the “old” EU-12 (14-24 kg p.c.).

The difference between the estimate of separate collection (85 %) and the officially reported figure indicates that a major portion of WEEE in Europe is collected through private and unofficial channels and finds its way to third countries.
The slide shows in a slightly modified form the cycle concept that was already explained in the context of the Waste Framework Directive. A functioning cycle depends on high quotas of collection and material recycling of waste electrical and electronic equipment.
The directives on waste electrical and electronic equipment (WEEE) and on the restriction

The WEEE recast: old and new Directive

- To be **transposed by MS** until 14.2.2014 (Art. 24)
- Repeals **old WEEE Directive 2002/96/EC** with effect from 15.2.2014
During the transitional period, as under the „old“ WEEE Directive, several exceptions are contained in the list of products (Annex II, formerly Annex IB), e.g. certain types of lamps and large-scale stationery industrial tools.
The definition of “producer” and the terms relating to the marketing of a product were very controversial under the “old” WEEE Directive. Of practical relevance were especially the questions whether “market” should be understood in a national or EU-wide sense and whether the producer needed to be established or registered in some way in the Member State where the product was sold. In order to ensure implementation and control of producer obligations, the EU legislators chose to require the establishment of a producer in each respective Member State, at least in the form of an authorized representative (Art. 17 Dir. 2012/19/EU). On the other hand, efforts were made to reduce administrative burdens by simplifying registration and reporting procedures (cf. Art. 16).


There is also some national jurisprudence on the distinction of EEE and non-EEE, for instance by the German Supreme Administrative Court (BVerwG) which classified sports shoes with electronic heel stabilization as non-EEE because the electronic function was not a primary one: Judgment of 21.2.2008, NVwZ 2008, 697.
The categories of EEE in Directive 2012/19/EU for the transitional period are essentially based on Annex IB of the old WEEE Directive. However, photovoltaic panels were added due to their rapidly increasing importance and the controversies about the Directive’s application.
The WEEE recast aimed also at linking the WEEE Directive more systematically with other EU law.

**Art. 4 / Eco-design Directive (2009/125/EC):**
Member States to „encourage“ cooperation + measures for design and production which facilitate reuse, dismantling + recovery – unless environmental protection / safety demand otherwise.

Waste definition; permit requirement for treatment, etc.

The target of 4 kg which the old WEEE Directive made compulsory since 2007 was easy to meet and exceeded from the start in most Member States. Specific recovery and reuse/recycling targets (50-80%) for different WEEE categories existed already under the old system and were slightly raised to between 55 and 85% under the new Directive. The recovery and reuse/recycling targets are differentiated essentially according to the size of the individual equipment and the quantity of the waste stream. The highest recovery rate applies to large household appliances, followed by IT and consumer equipment (especially computers and TV sets), whereas small household appliances which are more difficult to detect and separate from mixed waste fall under less ambitious targets. Because of different views on treatment standards, the Commission was tasked to request European standardization organisations (especially CENELEC) to develop harmonized norms (Art. 8.5).
The rules on financing were developed already under the old WEEE Directive (cf. Art. 8 and...
Information and reporting (Art. 14 –16)

- Obligation of Member States to inform users on separate collection, consumer’s role in recycling, effects of hazardous substances etc.
- Marking of all new EEE with „no bin“ symbol (Annex IX)
- Information for treatment facilities
- Identification of producer and date of marketing by mark on new EEE (detailed in CEN standards)
- Register of producers (at national level, but with links)
- 3-year report of MS to Commission on quantities and categories of EEE + on implementation of Directive
Due to the fast-growing stream of WEEE (computers, mobile phones, TV sets, refrigerators, etc.) from the EU to developing countries especially in Africa under the guise of "used goods", rules for the distinction of waste and non-waste were included in Annex VI of Directive 2012/19/EU. They are essentially based on Correspondents' Guideline No. 1 of the EU waste shipment correspondence; see [http://ec.europa.eu/environment/waste/shipments/guidance.htm](http://ec.europa.eu/environment/waste/shipments/guidance.htm).

**Key instruments**

- **Minimum requirements for shipments** (Annex VI, Article 23(2)) to prove shipment of non-WEEE (used EEE):
  - Copy of invoice and contract
  - Evidence of evaluation or functionality testing
  - Declaration of non-waste
  - Appropriate protection against damage
  - Or: business-to-business agreement for take-back

- **In absence of proof:** item is considered WEEE (Annex VI point 5)
Slide 15 lists mostly comitology decisions amending or supplementing the Annexes to the