



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
The Director-General

Frequently Asked Questions on

**Directive 2002/95/EC on the Restriction of the Use of certain
Hazardous Substances in Electrical and Electronic Equipment (RoHS)
and**

**Directive 2002/96/EC on Waste Electrical and Electronic Equipment
(WEEE)**



Foreword

Directive 2002/95/EC on the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) entered into force on 13 February 2003. Both Directives require Member States to transpose their provisions into national law by 13 August 2004.

These Frequently Asked Questions (FAQ) are intended to help the authorities in the Member States to interpret both directives. They could also be used as a reference by economic operators, as they will have to comply with the national laws transposing the Directives.

These FAQ reflect the views of the Commission, and as such are not legally binding; binding interpretation of Community legislation is the exclusive competence of the European Court of Justice.

They cannot go beyond or substitute for the requirements of the WEEE and RoHS Directives. The WEEE and RoHS Directives are binding on the Member States as regards the objectives to be achieved but leave them to decide how the agreed Community objective is to be incorporated into their legal system(s).

The WEEE and RoHS Directives addressed to the Member States do not, as a rule, confer rights or impose obligations on the Community citizen. They are addressed only to the Member States and the rights and obligations for the citizen flow only from the measures enacted by the authorities of the Member States to implement them.

This is a living document and so may be revised in the future, according to experience with the implementation in the Member States and the further development of European waste management policy in general.

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1. SCOPE

1.1. What is the legal base of the WEEE and the RoHS Directives?

The WEEE Directive is based on Article 175 of the Treaty. Member States can adopt stricter measures for environmental protection, as long as these measures comply with Community law (such as the principle of free movement of goods laid down in Articles 28-30 of the Treaty). Annex IA of the WEEE Directive contains a list of categories of products covered, and Annex IB contains a list of products falling into these categories. Since this list is non-exhaustive, Member States could in principle include other products in national legislation implementing the WEEE Directive, if they choose. The purpose of this Directive is, as a first priority, the prevention of WEEE, and in addition, to promote the reuse, recycling and other forms of recovery of such wastes so as to reduce disposal. It also seeks to improve the environmental performance of all operators involved in the life cycle of electrical and electronic equipment, e.g. producers, distributors and consumers, and in particular those operators directly involved in the treatment of waste electrical and electronic equipment.

The RoHS Directive is based on Article 95 of the Treaty. The purpose of this Directive is to approximate the laws of the Member States on restrictions of the use of hazardous substances in electrical and electronic equipment, and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

1.2. What are the criteria for determining whether a product falls under the RoHS Directive?

Nr.	Criteria for equipment considered to be covered by Directive 2002/95/EC (RoHS)	Interpretation	Examples of products outside the scope of RoHS
1	Equipment, "which is dependent on electric current or electromagnetic fields in order to work properly, and equipment for the generation, transfer and measurement of such currents and fields" [[RoHS Art, 3 (a)]	For the purpose of this Directive " dependent " means the equipment must be dependent on electric current or electromagnetic fields. In other words, electricity is the (e.g. not petrol or gas) primary energy. It also means that when the electric current is off, the appliance cannot fulfil its basic (primary) function. If electrical energy is used only for support or control functions this type of equipment is <u>not</u> covered by Directive 2002/96/EC.	<ul style="list-style-type: none"> - Piezo-electric ignition - Combustion engine with ignition - Petrol-driven lawnmower - Pneumatic tools - Gas cooker with electric clock - Teddy bear with battery
2	Equipment which is "designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current" [RoHS Art. 3 (a)]		<ul style="list-style-type: none"> - Piezo-electric ignition (> 1500 V) - High-voltage switchgear

Nr.	Criteria for equipment considered to be covered by Directive 2002/95/EC (RoHS)	Interpretation	Examples of products outside the scope of RoHS
3	- Additionally included are electric light-bulbs and luminaires in households [RoHS Art. 2.1]		<ul style="list-style-type: none"> - Medical equipment - Measurement and control equipment (categories 8 and 9 of the WEEE Directive)
4	Equipment which is not covered by "specific Community waste management legislation." [ROHS Art. 2.2]		Car radios
5	Spare parts for the repair, or the reuse, of electrical and electronic equipment put on the market from 1 July 2006. [RoHS Art. 2.3]	The Directive does not apply to parts for use in equipment put on the market before 1/07/2006 with the purpose of extending its life by updating its functionalities or upgrading its capacity.	
6	Military equipment [WEEE Art. 2.3]	Military equipment is excluded from the categories of Annex IA of the WEEE Directive, and therefore not covered by the RoHS Directive.	Arms, munitions, war material

The opinion of the Commission is that excluded from the scope of the RoHS Directive is the equipment which part of another type of equipment that does not fall within the scope of this Directive. Therefore, equipment that is specifically designed to be installed in airplanes, boats and other means of transport (including satellites) is considered to fall outside the scope of the RoHS Directive.

1.3. What is the criteria for determining whether a product falls under the WEEE Directive

Nr.	Criteria for equipment considered to be covered by Directive 2002/96/EC (WEEE)	Interpretation	Example of products outside the scope of WEEE
1	Equipment, "which is dependent on electric current or electromagnetic fields in order to work properly, and equipment for the generation, transfer and measurement of such currents and fields" [WEEE Art. 3 (a)]	<p>"Dependent" means that the equipment needs electricity (e. g. not petrol or gas) as its primary energy to fulfil its basic function.</p> <p>It also means that when the electric current is off, the appliance cannot fulfil its basic (primary) function. If electrical energy is used only for support or control functions (e. g.) this type of equipment is <u>not</u> covered by Directive 2002/96/EC.</p>	<ul style="list-style-type: none"> - Piezo-electric ignition - Combustion engine with ignition - Petrol-driven lawnmower - Pneumatic tools - Teddy bear with battery
2	Equipment which is "designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current" [WEEE Art, 3 (a)]		<ul style="list-style-type: none"> - Piezo-electric ignition (> 1500 V) - High-voltage switchgear
3	<p>Equipment which falls "under the categories set out in Annex I A" [WEEE Art 2.1 and Annex I]</p> <p>Excluded from category 6: large-scale stationary industrial tools</p>	<p>"Large-scale stationary industrial tools"</p> <p>are machines or systems, consisting of a combination of equipment, systems, finished products and/or components, each of which is designed to be used in industry only, permanently fixed and installed by professionals at a given place in an industrial machinery or in an industrial building to perform a specific task.</p> <p>Not intended to be placed on the market as a single functional or commercial unit.¹</p>	<ul style="list-style-type: none"> - Oil platforms - For commercial catering equipment there is no general exemption. Criteria is not related to the size but to whether the equipment is fixed or not.

¹ Interpretations according to the Guidelines on the application of Council Directive 89/336/EEC of 3 May 1989 on Electromagnetic Compatibility (Directive 89/336/EEC amended by Directives 91/263/EEC, 92/31/EEC, 93/68/EEC, 93/97/EEC) http://europa.eu.int/comm/enterprise/electr_equipment/emc/guides/emcguide.htm, the directives to be amended http://europa.eu.int/comm/enterprise/electr_equipment/emc/revision/proposal.htm

(3.7) A finished product in these guidance notes is any device, or unit of equipment that has a direct function, its own enclosure and - if applicable - ports and connections intended for end users.

(3.8) 'Direct function' is defined as any function of a component or a finished product which fulfils the intended use specified by the manufacturer in the instructions for use for an end-user. This function can be available without further adjustment or connections other than simple ones, which can be performed by any person not fully aware of the EMC implications."

(6.5.2.1) "Fixed installation", in the broadest sense, is defined as "a combination of several equipment, systems, finished products and/or components (hereinafter called "parts") assembled and/or erected by an assembler/installer at

Not legally binding

Last updated June 2006. Future updates will be done when a final position will be taken on outstanding issues.

Nr.	Criteria for equipment considered to be covered by Directive 2002/96/EC (WEEE)	Interpretation	Example of products outside the scope of WEEE
4	Equipment listed in Annex I B which “contains a list of products which fall under the categories set out in Annex IA” [WEEE Art. 2.1 and Annex I B]	At least the specific type of equipment quoted in Annex I B falls within the scope. Luminaires in households covers all types of luminaires in households	Explicitly excluded: - Luminaires in households - Filament lamps
5	Equipment which is <u>not</u> part of another type of equipment that does not fall within the scope of this Directive. [WEEE Art 2.1]	With reference to Directive 89/336/EEC and the Official Guidelines for the Implementation of this Directive the decision criteria are “Finished Product” or “Fixed Installation”. Equipment which is part of another type of equipment is not to be considered a <i>finished product</i> . A finished product is any device or unit of equipment that has a direct function , its own enclosure and - if applicable - ports and connections intended for end users. “ Direct function ” is defined as any function of a component or a finished product which fulfils the intended use specified by the manufacturer in the instructions for use for an end-user. This function can be available without further adjustment or connections other than simple ones which can be performed by any person. If the “other type of equipment” is a fixed installation it will not fall under the scope of the WEEE Directive. “ <i>Fixed installation</i> ” in the broadest sense is defined as “a combination of several equipment, systems, finished products and/or components (hereinafter called “parts”) assembled and/or erected by an assembler/installer	- Fixed installations like heating plants, industrial installations - Lifts - Control and monitoring equipment used in oil and gas electronics: permanent gauges and measurement while drilling instrumentation - Frequency converters: components are covered only when they are part of a product that is covered. Inclusion or exclusion will depend on the application of these components. This should be evaluated case by case. - Car radio and other equipment

a given place to operate together in an expected environment to perform a specific task, but not intended to be placed on the market as a single functional or commercial unit”.

² Interpretations according to the Guidelines on the application of Council Directive 89/336/EEC of 3 May 1989 on Electromagnetic Compatibility (Directive 89/336/EEC amended by Directives 91/263/EEC, 92/31/EEC, 93/68/EEC, 93/97/EEC) http://europa.eu.int/comm/enterprise/electr_equipment/emc/guides/emcguide.htm , the directives to be amended http://europa.eu.int/comm/enterprise/electr_equipment/emc/revision/proposal.htm

(3.7) A finished product in these guidance notes is any device, or unit of equipment that has a direct function, its own enclosure and - if applicable - ports and connections intended for end users.”

(3.8) ‘Direct function’ is defined as any function of a component or a finished product which fulfils the intended use specified by the manufacturer in the instructions for use for an end-user. This function can be available without further adjustment or connections other than simple ones which can be performed by any person not fully aware of the EMC implications.”

Not legally binding

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Nr.	Criteria for equipment considered to be covered by Directive 2002/96/EC (WEEE)	Interpretation	Example of products outside the scope of WEEE
		at a given place to operate together in an expected environment to perform a specific task, but not intended to be placed on the market as a single functional or commercial unit ". ²	designed for being used in a product covered by the ELV - Radio Frequency Identification (RFID) ³
6	Equipment which is not covered by "specific Community waste management legislation." [WEEE Art 2.2]		
7	Equipment which is not a product which is intended for specifically military purposes [WEEE Art 2.3]	This does not, however, apply to products which are not intended for specifically military purposes. [WEEE Art 2.3]	Arms, munitions, war material

(6.5.2.1) "Fixed Installation", in the broadest sense, is defined as "a combination of several equipment, systems, finished products and/or components (hereinafter called "parts") assembled and/or erected by an assembler/installer at a given place to operate together in an expected environment to perform a specific task, but not intended to be placed on the market as a single functional or commercial unit".

³ RFID put on the packaging of the product are considered to be excluded from the WEEE Directive. If they are put on the appliance they are covered by the WEEE Directive and therefore will have to be recycled by the producer of the appliance.

1.4. Is my product covered by the WEEE and RoHS Directives?

This FAQ document provides criteria for determining whether a product falls under the scope of the Directive(s) and does not provide criteria on the categorisation of the products. The document can assist producers in making this assessment.

However, the onus to determine if a product falls within the scope of the two Directives is on the producer who is the person best placed to assess the characteristics of his product. In case of doubt, producers can check with the Member States authorities that are responsible for the enforcement of the national legislation implementing the provisions of the WEEE and RoHS Directives.

It should also be noted that:

* the WEEE Directive is based on Article 175 of the EC Treaty, and therefore Member States have the right to include additional products in the scope of the national legislation implementing the obligations of the WEEE Directive, for reasons of environmental protection. However, such national measures should comply with the other primary EC Treaty provisions, such as the free movement of goods.

* the RoHS Directive is based on Article 95 of the EC Treaty, and therefore Member States do not have the competence to include additional products in the scope of the national legislation, without prior notification of such draft national legislation to the Commission pursuant to Article 95 (5) of the EC Treaty.

1.5. Is my product covered by one of the exemptions listed in the Annex to the RoHS Directive?

Exemptions are given for technical applications of the banned substances rather than for electrical or electronic products as such.

The onus to determine if a specific application is covered by the exemptions listed in the Annex to the RoHS Directive is on the producer who is the person best placed to assess the characteristics of his product. In case of doubt concerning the scope of the exemption, the producer can check with the Member States authorities that are responsible for the enforcement of the national legislation implementing the provisions of the RoHS Directives.

Information on the scientific and technical background of the exemption, that can be used for the interpretation of the exemptions, is provided for in the following two studies: "Technical adaptation under Directive 2002/95/EC (RoHS) - Investigation of exemptions", December 2004, and "Adaptation to scientific and technical progress under Directive 2002/95/EC, Interim Report, October 2005". They are both available at: http://europa.eu.int/comm/environment/waste/weee_index.htm.

The final report on the "Adaptation to scientific and technical progress under Directive 2002/95/EC" will be published in September 2006 ".

1.6. How can I ask for an exemption from the RoHS Directive?

The procedure for the granting an exemption is long and when granted, the exemption is valid for a maximum period of four years and subject to a review pursuant to Article 5(1)(c) of the Directive.

The request for exemption has to be precise and refer to a specific application of the substances of Article 4(1) of the RoHS Directive and can only be considered if strictly fulfilling the requirements of Article 5(1)(b) of the RoHS Directive.

Submitters have to provide to the Commission all technical evidence supporting their request. Article 5(1)(b) of the RoHS Directive is the only criteria and guideline to be followed for arguing a request for exemption.

Then the Commission submits the requests for exemptions to a public stakeholder consultation pursuant to Article 5(2) of the RoHS Directive, for a minimum period of eight weeks. The previous stakeholder consultations can be found at: http://europa.eu.int/comm/environment/waste/weee_index.htm.

Following the stakeholder consultation the request is assessed by an independent consultant. On the basis of the results of this review process, the Commission will decide if to present a proposal for exemptions to the Technical Adaptation Committee (TAC) for vote.

1.7. Are exemptions granted per company, product or application?

Exemptions are granted for specific applications (and not to whole products) of the substances referred to in Article 4(1) of the RoHS Directive. Therefore, whoever uses the substances in the specific application exempted from the RoHS can benefit from the exemption.

1.8. Do the WEEE and the RoHS Directives apply to electrical and electronic products for professional use?

The WEEE Directive contains provisions that cover WEEE from households and WEEE from users other than private households. WEEE from private households means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households. WEEE from other users than private households can then be all WEEE that is not defined as WEEE from private households.

Financing provisions in respect of WEEE from private households are laid down in Article 8 while Article 9 covers WEEE from users other than private households. In addition, Article 10(3) does not specifically limit the marking obligation to electrical and electronic equipment (EEE) for private households because in some cases it is difficult to distinguish between households and professional electrical and electronic equipment. Therefore, the marking obligation also applies to EEE for professional use.

The RoHS Directive does not differentiate between households or professional EEE, so products for professional use are covered by the RoHS Directive.

1.9. Do the WEEE and the RoHS Directives apply to batteries?

(Please note that the below text refers to the agreement that European Parliament and the Council reached in Conciliation on the final text of the new Battery Directive. The new Battery Directive is expected to be adopted and published in the coming months.)

The Battery Directive and the RoHS Directive have similar substance restrictions. The RoHS Directive restricts the use of heavy metals, such as mercury and cadmium in electrical and electronic equipment, but does not apply to batteries. The Battery Directive restricts the use of mercury and cadmium in batteries (the cadmium restriction only applies to portable battery applications).

Batteries incorporated in WEEE will be collected on the basis of the WEEE Directive. However, after collection on the basis of the WEEE Directive, they will be removed from the electronic equipment (Annex II of the WEEE Directive) and they will count for the collection targets of the Battery Directive. They also have to undergo the recycling requirements of the Battery Directive.

A producer of electrical and electronic equipment (appliance producer) is also regarded as a battery producer under the Battery Directive, if the appliance producer puts an appliance on the market with a battery inside. This is to ensure that there will be a responsible producer for all batteries placed on the Community market. However, Member States should avoid any double charging of producers in case batteries are collected with the appliance on the basis of the WEEE Directive.

1.10. Do the WEEE and the RoHS Directives apply to ink cartridges?

Article 3(a) of the WEEE Directive defines electrical and electronic equipment (EEE) as “equipment which is dependent on electric currents or electronic-magnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and files falling under the categories set out in Annex IA and designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current.” The WEEE Directive defines WEEE as “electrical or electronic equipment which is waste within the meaning of Article 1(a) of Directive 75/442/EEC on waste, including all components, subassemblies and consumables which are part of the product at the time of discarding”. According to the definition of EEE, the printer itself is EEE because it falls under Category 3 of Annex IB to the WEEE Directive.

If a printer is discarded, it becomes WEEE. This means that if an ink cartridge is inside a discarded printer, the cartridge becomes part of the WEEE because it is a consumable which is part of the printer at the time of discarding. Article 4 of the WEEE Directive requires Member States to encourage the design and production of electrical and electronic equipment which takes into account and facilitates dismantling and recovery, in particular the reuse and recycling of WEEE, their components and materials. However, the cartridge itself does not fall under the definition of EEE, but is considered to be a consumable.

Therefore the RoHS Directive does not apply to ink cartridges.

1.11. Do electrical or electronic devices such as car radios fall under the RoHS Directive or under Directive 2000/53/EC on end of life vehicles (ELV)?

Some electrical and electronic devices such as radios, CD players and navigation systems can be bought separately in repair shops, supermarkets or specialized shops and installed and used in vehicles. The question is whether these devices are subject to the RoHS Directive or to Directive 2000/53/EC on end-of-life vehicles (ELV).

Article 2(2) of the RoHS Directive stipulates: *“This Directive shall apply without prejudice to Community legislation on safety and health requirements and specific Community waste management legislation”*.

Therefore, if devices are not specifically designed to be used in vehicles, those devices would be covered by the RoHS Directive. If the devices are designed primarily for use in vehicles (such as car radios) then the ELV Directive applies.

1.12. Does the RoHS Directive apply to spare parts installed in new equipment?

The RoHS Directive provides that new electrical and electronic equipment put on the market for the first time from 1 July 2006 should not contain lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE) (Article 4(1)). The Directive provides for two sets of derogations:

- * the Directive does not apply to the applications listed in the Annex,
- * the Directive does not apply to spare parts for the repair, or reuse, of electrical and electronic equipment put on the market before 1 July 2006 (Article 2(3)). This is to allow old equipment to be maintained with spare parts and to ensure that old electrical and electronic equipment is reused. This derogation is explicitly limited to old equipment, i.e. put on the market before 1 July 2006.

Therefore, it is permissible to put on the market spare parts - containing the hazardous substances - for the repair of old equipment (put on the market before 1 July 2006), but not to repair new equipment (put on the market after 1 July 2006). In fact, the marketing of spare parts containing banned substances for the repair of new equipment would prolong the existence of hazardous substances in the waste stream and hamper efforts to increase recycling.

1.13. Is the use of non-RoHS compliant material allowed for capacity expansion and/or upgrade in electrical and electronic products put on the market before 1 July 2006?

The use of non-RoHS compliant material in electrical and electronic equipment (EEE) products put on the market before 1 July 2006 for the purposes of capacity expansion and/or upgrade is allowed in principle provided that the EEE is not put on the market as a

new product. If after the capacity expansion and/or upgrade the EEE is put on the market as a new product it should comply with the RoHS directive.

However, if after capacity expansion and/or upgrade the EEE is put on the market as a reused product, the RoHS Directive does not apply.

1.14. Does the substance ban under the RoHS Directive apply to the production process?

Pursuant to Article 4(1) of the RoHS Directive “Member States shall ensure that, from 1 July 2006, new electrical and electronic equipment put on the market does not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE). National measures restricting or prohibiting the use of these substances in electrical and electronic equipment which were adopted in line with Community legislation before the adoption of this Directive may be maintained until 1 July 2006.”

It is understood that the substance ban refers to the final product and not the production process.

1.15. Does the substance ban under the RoHS Directive apply to products built for own use?

The RoHS Directive applies only to products that are put on the market. Products manufactured for own use are excluded from the scope of the Directive. If, subsequently put on the market, they have to comply with the Directive.

1.16. Are Radio Frequency Identification (RFID) chips included in the scope of the WEEE and RoHS Directives?

RFIDs meet the definition of electrical and electronic equipment provided for in the WEEE and RoHS Directives and can be considered to fall under Category 3 “IT and telecommunication equipment”. RFIDs are covered by the RoHS Directive.

Concerning the WEEE Directive, if RFIDs are put on the packaging of the electrical and electronic equipment they are considered to fall outside the scope of the Directive because they are part of a product that is not covered by the WEEE Directive. If they are put on the equipment, the producer of the equipment is responsible for recycling.

1.17. Are antennas, cables, fibre optics and waveguides covered by the WEEE and RoHS Directives?

Antennas and cables meet the definition of electrical and electronic equipment (EEE) under the WEEE and RoHS Directives. The difference between electrical and fibre optics relates to the material, not the function (electrical cables too can be and have been used for the transmission of information, sound, image etc.). All cables inside and/or as

extensions or connections which are part of the equipment at the time of discarding are considered WEEE. All cables used for fixed installations fall outside the scope of WEEE.

Masts and pylons do not meet the definition of EEE. If the products are integrated into a fixed installation they are not considered WEEE. Modular cabling systems for voice, data and video applications fall under Category 3 "IT and telecommunication equipment" of the WEEE Directive and are covered by the RoHS Directive.

1.18. What is meant by "infected products"?

The WEEE Directive applies to the categories listed under Annex IA of the Directive. Annex IB contains a non-exhaustive list of products falling under the categories. Category 8 covers "medical devices with the exception of all implanted and infected products". Infected products are understood to be products that have come into contact with blood or other biological contaminants prior to end-of-life.

1.19. What is meant by "video games"?

"Video games" are listed under Category 7, Annex IB of the WEEE Directive. Video games are to be interpreted in the sense of hardware equipment. The hardware equipment meet the definition of electrical and electronic equipment under the WEEE Directive. Software equipment (such as cards, CD-roms, etc) does not meet the definition of electronic equipment and can be considered as consumables.

2. DEFINITIONS

2.1. What does “put on the market” mean?

The words 'put on the market' in Article 10 (3) of the WEEE Directive and Article 4 (1) of the RoHS Directive refer to the initial action of making a product available for the first time on the Community market. This takes place when the product is transferred from the producer to a distributor or final consumer or user on the Community market.

“Making a product available for the first time” refers to each individual piece of equipment put on the market after the date for the substances restrictions (that is 1 July 2006), and not to the launch of a new product or product line. Moreover the concept of putting on the market refers to each individual product, not to a type of product, irrespective of whether it was manufactured as an individual unit or a series.

The same or a similar term is used in many directives, such as internal market directives based on the New Approach and the Global Approach,, where it is also understood as the first making available of a product on the Community market.

In order to assess whether a product has been put on the market, it has to be determined on a case by case assessment whether the relevant action has led to the fact that the product is *made available on the EU market* for the first time.

The Guide to the implementation of directives based on the New Approach and the Global Approach clarifies the concept of "placing on the market" and provides further *guidance* to its interpretation: :

"Placing on the market is the initial action of making a product available for the first time on the Community market, with a view to distribution or use in the Community. Making available can be either for payment or free of charge [...] A product is placed on the Community market when it is made available for the first time. This is considered to take place when a product is transferred from the stage of manufacture with the intention of distribution or use on the Community market. [...] The transfer of the product takes place either from the manufacturer, or the manufacturer's authorised representative in the Community, to the importer established in the Community or to the person responsible for distributing the product on the Community market. The transfer may also take place directly from the manufacturer, or authorised representative in the Community, to the final consumer or user. The product is considered to be transferred either when the physical hand-over or the transfer of ownership has taken place. This transfer can be for payment or free of charge, and it can be based on any type of legal instrument. Thus, a transfer of a product is considered to have taken place, for instance, in the circumstances of sale, loan, hire, leasing and gift."

See <http://europa.eu.int/comm/enterprise/newapproach/legislation/guide/legislation.htm>.

Furthermore, products must be in compliance with the applicable new approach Directives, and other Community legislation, when they are placed on the market. Accordingly, new products manufactured in the Community and all products imported

from third countries – whether new or used – must meet the provisions of the applicable directives when made available for the first time on the Community market.

2.2. Is the import of EEE into the European Union seen as a placing a product on the market?

Placing on the market is the initial action of making a product available for the first time on the Community market, with a view to distribution or use in the Community. Hence, products are not considered to be placed on the market before they have entered the territory of customs union.

As explained above, a product is considered to be made available on the EU market for the first time, when it is transferred from the stage of manufacture with the intention of distribution or use on the Community market. With the transfer of a product located outside the EU to a customer located inside the EU the product is usually made available on the EU market for the first time. Under certain circumstance however such a transfer does not lead to the fact that the product is already made available on the EU market.. Page 18 of the Guide to the implementation of Directives based on the New Approach and the Global Approach gives an indication of such cases:

"Placing on the market is considered not to take place where a product is: ...

- transferred to a manufacturer for further measures (for example assembling, packaging, processing or labelling; ...
- "not (yet) granted release for free circulation by customs, or has been placed under another customs procedure (for example, transit, warehousing or temporary importation) or is in a free zone; ...
- in the stocks of the manufacturer, or the authorised representative established in the Community, where the product is not yet made available;..."

When products are stored in a warehouse of a manufacturer, they are not yet made available on the market. Therefore, the transfer to get the product from the place where it is manufactured - whether outside or inside the European Union - to a manufacturer's warehouse does not constitute placing on the market.

Placing on the market presupposes that the product has been transferred from the stage of manufacturing to the stage of distribution. The distribution chain can also be the commercial chain of the manufacturer or his authorised representative.

2.3. Are maximum concentration values set in the RoHS Directive?

For the purposes of Article 5(1)(a) the Commission has adopted Decision 2005/618/EC⁴ whereby a maximum concentration value of 0.1% by weight in homogeneous materials for lead, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and

⁴ OJ L214, 19.8.2005.

polybrominated diphenyl ethers (PBDE) and of 0.01% weight in homogeneous materials for cadmium shall be allowed.

Homogeneous material means a material that can not be mechanically disjointed into different materials.

Definitions:

The term "homogeneous" means "of uniform composition throughout". Examples of "homogeneous materials" are individual types of: plastics, ceramics, glass, metals, alloys, paper, board, resins and coatings.

The term "mechanically disjointed" means that the materials can, in principle, be separated by mechanical actions such as: unscrewing, cutting, crushing, grinding and abrasive processes.

Examples:

- A plastic cover is a "homogeneous material" if it consists of one type of plastic that is not coated with or has attached to it or inside it any other kinds of materials. In this case the limit values of the Directive would apply to the plastic.
- An electric cable that consists of metal wires surrounded by non-metallic insulation materials is an example of a "non-homogeneous material" because the different materials could be separated by mechanical processes. In this case the limit values of the Directive would apply to each of the separated materials individually.
- A semi-conductor package contains many homogeneous materials which include: plastic moulding material, tin-electroplating coatings on the lead frame, the lead frame alloy and gold-bonding wires.

2.4. Which certificate do I need to show RoHS compliance?

Pursuant to Article 4(1) of the RoHS Directive Member States will have to ensure that products put on the EU market as from 1 July 2006 conform to the provisions of the Directive. The RoHS Directive does not refer to specific compliance procedures, certificates or testing methods to be used for demonstrating compliance. Therefore, the Member States are fully responsible for setting compliance rules.

Member States are currently discussing possible approaches on compliance checking. For more information Member States authorities that are responsible for the enforcement of the national legislation implementing the provisions of the RoHS Directive can be contacted directly.

2.5. Can companies mark equipment with a label indicating that the equipment is RoHS compliant?

Companies are free to mark their products on a voluntary basis, as long as this voluntary labeling does not violate primary or secondary EC law, such as the free movement of goods.

2.6. Is re-use of the appliance covered by the targets?

The targets set in Article 7 of the WEEE Directive can be attained by recovery, recycling and re-use of components, materials or substances and relate to WEEE sent for treatment. The reuse of whole equipment is not covered by these targets.

Treatment is defined in Article 3(h) as ‘any activity after the WEEE has been handed over to a facility for de-pollution, disassembly, shredding, recovery or preparation for disposal and any other operation carried out for the recovery and/or the disposal of the WEEE’. If equipment is sorted for reuse before going to the treatment facility it does not count towards the targets. The repair of whole equipment is not considered to be treatment in the sense of Article 3(h). However, the re-use of components will be counted towards the targets.

3. MARKING REQUIREMENTS

Article 10(3) of the WEEE Directive lays down the obligation for Member States to ensure that producers appropriately mark electrical and electronic equipment put on the market after 13 August 2005 with the symbol shown in Annex IV to the Directive. Article 11(2) of the WEEE Directive lays down two labelling obligations: Member States shall ensure that any producer of an EEE put on the market after 13 August 2005 is clearly identifiable by a mark on the appliance and Member States shall ensure that a mark on the appliance shall specify that the latter was put on the market after 13 August 2005.

In order to promote the preparation of European standards for this purpose, the Commission contracted CENELEC – the European Committee for Electrotechnical standardisation – that developed a European standard for the requirements laid down in the articles 10(3) and 11(2) of the WEEE Directive.

This standard was ratified in December 2004 and the reference number is EN40519. According to the introduction of the standard, national standardisation bodies have to apply the standard as from 1 August 2005 on. This implies that all products should be marked in accordance with the provisions of this standard. For further requests on assistance in relation to provisions of the standard or further information on implementation of the standard, the national standardisation bodies or the CENELEC secretariat (www.cenelec.org) can be contacted directly.

4. ANNEX II – TREATMENT REQUIREMENTS

Article 6 and Annex II to the Directive lay down the requirements for the treatment of WEEE. To ensure compliance with the waste framework Directive (75/442/EEC), the treatment shall, as a minimum, include the removal of all fluids and a selective treatment for materials and components in accordance with Annex II.

Member States authorities that are responsible for the enforcement of the national legislation implementing these provisions have produced guidance document on their national provisions. This document covers (i) an interpretation of the term "has to be removed", (ii) technical guidance regarding treatment of the substances, preparations and components that have to be removed from any separately collected WEEE and (iii) an interpretation of the further provisions of the Annex II. More information can be obtained directly from the Member States applying this guidance document.

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