

**COMMON POSITION (EC) No 19/2002****adopted by the Council on 4 December 2001****with a view to adopting Directive 2002/.../EC of the European Parliament and of the Council of  
... on the restriction of the use of certain hazardous substances in electrical and electronic  
equipment (RoHS)**

(2002/C 90 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social  
Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty <sup>(4)</sup>,

Whereas:

- (1) The disparities between the laws or administrative measures adopted by the Member States as regards the restriction of the use of hazardous substances in electrical and electronic equipment could create barriers to trade and distort competition in the Community and may thereby have a direct impact on the establishment and functioning of the internal market. It therefore appears necessary to approximate the laws of the Member States in this field and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.
- (2) The European Council at its meeting in Nice on 7, 8 and 9 December 2000 endorsed the Council resolution of 4 December 2000 on the precautionary principle.
- (3) The Commission communication of 30 July 1996 on the review of the Community strategy for waste management

stresses the need to reduce the content of hazardous substances in waste and points out the potential benefits of Community-wide rules limiting the presence of such substances in products and in production processes.

- (4) The Council resolution of 25 January 1988 on a Community action programme to combat environmental pollution by cadmium <sup>(5)</sup> invites the Commission to pursue without delay the development of specific measures for such a programme. Human health also has to be protected and an overall strategy that in particular restricts the use of cadmium and stimulates research into substitutes should therefore be implemented. The resolution stresses that the use of cadmium should be limited to cases where suitable and safer alternatives do not exist.
- (5) The available evidence indicates that measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment (WEEE) as set out in Directive 2001/.../EC of the European Parliament and of the Council on waste electrical and electronic equipment <sup>(6)</sup> are necessary to reduce the waste management problems linked to the heavy metals concerned and the flame retardants concerned. In spite of those measures, however, significant parts of WEEE will continue to be found in the current disposal routes. Even if WEEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment.
- (6) Taking into account technical and economic feasibility, the most effective way of ensuring the significant reduction of risks to health and the environment related to those substances which can achieve the chosen level of protection in the Community is the substitution of those substances in electrical and electronic equipment by safe or safer materials. Restricting the use of these hazardous substances is likely to enhance the possibilities and economic profitability of recycling of WEEE and decrease the negative health impact on workers in recycling plants.
- (7) The substances covered by this Directive are scientifically well researched and evaluated and have been subject to different measures both at Community and national level.

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 195 and OJ C 240 E, 28.8.2001, p. 303.

<sup>(2)</sup> OJ C 116, 20.4.2001, p. 38.

<sup>(3)</sup> OJ C 148, 18.5.2001, p. 1.

<sup>(4)</sup> Opinion of the European Parliament of 15 May 2001, Council Common Position of 4 December 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(5)</sup> OJ C 30, 4.2.1988, p. 1.

<sup>(6)</sup> OJ L ...

- (8) The measures provided for in this Directive take into account existing international guidelines and recommendations and are based on an assessment of available scientific and technical information. The measures are necessary to achieve the chosen level of protection of human and animal health and the environment, having regard to the risks which the absence of measures would be likely to create in the Community. The measures should be kept under review and, if necessary, adjusted to take account of available technical and scientific information.
- (9) This Directive should apply without prejudice to Community legislation on safety and health requirements and specific Community waste management legislation, in particular Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances <sup>(1)</sup>.
- (10) The technical development of electrical and electronic equipment without heavy metals, PBDE and PBB should be taken into account. As soon as new scientific evidence becomes available and taking into account the precautionary principle, the prohibition of other hazardous substances and their substitution by more environmentally friendly alternatives which ensure at least the same level of protection of consumers should be examined.
- (11) Exemptions from the substitution requirement should be permitted if substitution is not possible from the scientific and technical point of view or if the negative environmental or health impacts caused by substitution are likely to outweigh the human and environmental benefits of the substitution. Substitution of the hazardous substances in electrical and electronic equipment should also be carried out in a way so as to be compatible with the health and safety of users of electrical and electronic equipment (EEE).
- (12) The adaptation to scientific and technical progress of the exemptions from the requirements concerning phasing out and prohibition of hazardous substances should be effected by the Commission under a committee procedure.
- (13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(2)</sup>,

<sup>(1)</sup> OJ L 78, 26.3.1991, p. 38. Directive as amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Objectives

The purpose of this Directive is to approximate the laws of the Member States on the 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.

#### Article 2

##### Scope

1. Without prejudice to Article 6, this Directive shall apply to electrical and electronic equipment falling under categories 1, 2, 3, 4, 5, 6, 7 and 10 set out in Annex IA to Directive No 2001/.../EC (WEEE) and to electric light bulbs, and luminaires in households.

2. This Directive shall apply without prejudice to Community legislation on safety and health requirements and specific Community waste management legislation.

#### Article 3

##### Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) 'electrical and electronic equipment' or 'EEE' means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in Annex IA to Directive 2001/.../EC (WEEE) and designed for use with a voltage rating not exceeding 1 000 V for alternating current and 1 500 V for direct current;
- (b) 'producer' means any person who, irrespective of the selling technique used, including by means of distance communication according to Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts <sup>(3)</sup>:
- (i) manufactures and sells electrical and electronic equipment under his own brand,
  - (ii) resells under his own brand equipment produced by other suppliers, or
  - (iii) imports or exports electrical and electronic equipment on a professional basis into a Member State.

<sup>(3)</sup> OJ L 144, 4.6.1997, p. 19.

**Article 4****Prevention**

1. By 1 January 2007 at the latest, Member States shall ensure that new electrical and electronic equipment put on the market does not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) and/or polybrominated diphenyl ether (PBDE).

2. Paragraph 1 shall not apply to the applications listed in the Annex.

**Article 5****Adaptation to scientific and technical progress**

1. Any amendments which are necessary in order to adapt the Annex to scientific and technical progress for the following purposes shall be adopted in accordance with the procedure referred to in Article 7(2):

- (a) establishing, as necessary, maximum concentration values up to which the presence of the substances referred to in Article 4(1) in specific materials and components of electrical and electronic equipment shall be tolerated;
- (b) exempting materials and components of electrical and electronic equipment from Article 4(1) if the use of the substances referred to therein in those materials and components is technically or scientifically unavoidable or where the negative environmental and/or health impacts caused by substitution are likely to outweigh the environmental and/or health benefits thereof;
- (c) carrying out a review of each exemption in the Annex at least every four years or four years after an item is added to the list with the aim of considering deletion of materials and components of electrical and electronic equipment from the Annex if the use of the substances referred to in Article 4(1) in these materials and components is avoidable, provided that the negative environmental and/or health impacts caused by substitution do not outweigh the possible environmental and/or health benefits thereof.

2. Before the Annex is amended pursuant to paragraph 1, the Commission shall, *inter alia*, consult producers of electrical and electronic equipment, recyclers, treatment operators, environmental organisations and employee and consumer associations. Comments shall be forwarded to the Committee referred to in Article 7(1).

**Article 6****Review**

Before ...(\*), the Commission shall review the measures provided for in this Directive to take into account, as necessary, new scientific evidence.

In particular the Commission shall by that date present proposals for including in the scope of this Directive equipment which falls under categories 8 and 9 set out in Annex IA to Directive 2001/. . ./EC (WEEE).

The Commission shall also study the need to adapt the list of substances of Article 4(1), on the basis of new scientific evidence and taking the precautionary principle into account, and present proposals for such adaptations, if appropriate.

**Article 7****Committee**

1. The Commission shall be assisted by the Committee set up by Article 18 of Directive 75/442/EEC <sup>(1)</sup>.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

**Article 8****Penalties**

Member States shall determine penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

**Article 9****Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before ...(\*\*). They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

<sup>(1)</sup> OJ L 194, 25.7.1975, p. 39.

(\*) Two years after the date of entry into force of this Directive.

(\*\*) Eighteen months after the date of entry into force of this Directive.

2. Member States shall communicate to the Commission the text of all laws, regulations and administrative provisions adopted in the field covered by this Directive.

*Article 11*

**Addressees**

This Directive is addressed to the Member States.

*Article 10*

Done at . . .

**Entry into force**

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

*For the European Parliament*

*The President*

*For the Council*

*The President*

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## ANNEX

**APPLICATIONS OF LEAD, MERCURY, CADMIUM AND HEXAVALENT CHROMIUM, WHICH ARE EXEMPTED FROM THE REQUIREMENTS OF ARTICLE 4(1)**

1. Mercury in compact fluorescent lamps not exceeding 5 mg per lamp.
2. Mercury in straight fluorescent lamps for general purposes not exceeding:
  - halophosphate 10 mg,
  - triphosphate with normal lifetime 5 mg,
  - triphosphate with long lifetime 8 mg.
3. Mercury in straight fluorescent lamps for special purposes.
4. Mercury in other lamps not specifically mentioned in this Annex.
5. Lead in glass of cathode ray tubes, electronic components and fluorescent tubes.
6. Lead as an alloying element in steel containing up to 0,35 % lead by weight, aluminium containing up to 0,4 % lead by weight and as a copper alloy containing up to 4 % lead by weight.
7. — Lead in high melting temperature type solders (i.e. tin-lead solder alloys containing more than 85 % lead),
  - lead in solders for servers, storage and storage array systems (exemption granted until 2010),
  - lead in solders for network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunications,
  - lead in electronic ceramic parts (e.g. piezoelectronic devices).
8. Cadmium plating except for applications banned under Directive 91/338/EEC <sup>(1)</sup> amending Directive 76/769/EEC <sup>(2)</sup> relating to restrictions on the marketing and use of certain dangerous substances and preparations
9. Hexavalent chromium as an anti-corrosion of the carbon steel cooling system in absorption refrigerators.

Within the procedure referred to in Article 7(2), the Commission shall evaluate the applications for:

- Octa BDE, Deca BDE,
- mercury in straight fluorescent lamps for special purposes,
- lead in solders for servers, storage and storage array systems, network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunications (with a view to setting a specific time limit for this exemption), and
- light bulbs,

as a matter of priority in order to establish as soon as possible whether these items are to be amended accordingly.

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<sup>(1)</sup> OJ L 186, 12.7.1991, p. 59.

<sup>(2)</sup> OJ L 262, 27.9.1976, p. 201.

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 28 July 2000, the Commission sent the Council a proposal for a European Parliament and Council Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) <sup>(1)</sup>, based on Article 95 of the Treaty.
2. The European Parliament delivered its opinion at first reading on 15 May 2001.  
  
The Economic and Social Committee delivered its opinion <sup>(2)</sup> on 29 November 2000, whereas the Committee of the Regions gave its opinion <sup>(3)</sup> on 14 February 2001.
3. Following these opinions, the Commission forwarded its amended proposal to the Council on 8 June 2001.
4. On 4 December 2001, the Council adopted its Common Position in accordance with Article 251(2) of the Treaty.

### II. OBJECTIVE

The purpose of this Directive is to approximate the laws of the Member States on the restrictions of the use of hazardous substances in electrical and electronic equipment (i.e. heavy metals and brominated flame retardants). Available evidence indicates that measures are necessary to reduce the waste management problems linked to these substances likely to pose risks to health or the environment. The most effective way of ensuring the significant reduction of these risks is their substitution by safer materials by a given date.

However, if this is not possible, a limited number of exemptions from the substitution requirement should be permitted. These exemptions from the requirements of phasing out and prohibition are to be reconsidered according to scientific and technical progress under a committee procedure.

### III. ANALYSIS OF THE COMMON POSITION

The Council's Common Position, whilst generally maintaining the approach and main provisions proposed by the Commission, has added a series of amendments to the proposal either to clarify, strengthen or render its requirements more practicable.

#### A. Amended Commission proposal

1. The Council adopted either in full, in part or occasionally in spirit an important number of the amendments proposed by the European Parliament and accepted by the Commission.

These concern:

- amendment 1 incorporated in recital 6 (slightly reworded),
- amendment 4 included partly and in spirit in recital 11,
- amendments 9 and 23 have been partly incorporated in Article 2(1) (addition in scope of category 10, light bulbs and luminaires in households),
- amendment 10: its first part has been introduced in Article 4(1) in part and, as far as the date is concerned, to a certain extent,
- amendment 12 has partly been taken over in Article 5(2),

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 195 and OJ C 240 E, 28.8.2001, p. 303.

<sup>(2)</sup> OJ C 116, 20.4.2001, p. 38.

<sup>(3)</sup> OJ C 148, 18.5.2001, p. 1.

- amendment 17 has been incorporated in Article 8,
- amendment 18 has been incorporated in Article 9(1),
- amendment 19 has been incorporated in Article 10,
- amendment 21, indents 4, 5, 9 and 11 have been deleted (following the addition of category 10 in the scope) and lead contained in high melting temperature type solder (however more clearly specified by the Council) has been added.

2. Amendment 8, not accepted by the Commission, has been reworded and introduced in Article 1 and recital 1 of the Common Position.

#### **B. Innovations introduced by the Council**

In addition to the introduction of the amendments mentioned above, the Council also made other changes to the proposal. These mainly concern:

- Article 3

The definition of 'producer' has been aligned with the one contained in the WEEE Directive to introduce the concept of selling by means of distance communication (and therefore also the notion of 'export' under 3(b)(iii)),

- Article 4

Harmonisation of phasing out of those hazardous substances mentioned in Article 4(1) has been brought forward by one year; moreover, the words 'at the latest' have been introduced to allow a number of Member States to maintain their more stringent legislation in this field,

- Article 5(1)(c)

Requires the Committee to carry out a revision of the exemptions contained in Article 4(2) and its appertaining Annex every four years with the aim of considering their deletion,

- Article 6

A second subparagraph requires the Commission to present proposals within two years of the entry into force of the Directive to include in its scope the equipment falling under categories 8 and 9 of the WEEE Directive.

A third subparagraph requires the Commission to study the need to adapt the banned hazardous waste list contained in Article 4(1) on the basis of scientific evidence and the precautionary principle and, if appropriate, to present proposals to do so,

- Annex

The Council has clarified the list regarding mercury in straight fluorescent lamps. Concerning lead, it has deleted the mention of light bulbs and clarified the entries for lead in solder. Moreover, the Council requires the Commission under the committee procedure to evaluate the applications of a series of hazardous substances as a matter of priority in view of their possible amendment.

The Commission did not accept the term 'at the latest' in Article 4(1).

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