



The Assessment of the Scope of Directive 2002/96/EC on WEEE and Directive 2002/95/EC on RoHS

Orgalime Position Paper

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1. Introduction

Orgalime speaks for 32 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries in 21 European countries. These industries employ some 7.3 million people and account for 1200 billion Euro in the GNP and a third of the manufactured exports of the European Union.

Orgalime's national association members represent nearly all the sectors included in the scope of the directive.

2. Key political principles

Orgalime recommends that the Technical Adaptation Committee (TAC), when examining the scope of directive 2002/96/EC on WEEE and directive 2002/95/EC on RoHS should take into account 3 key political principles:

- The RoHS directive, dealing with the restriction of the placement on the European single market of certain hazardous substances, is based on EC Treaty article 95. The scope of the directive is therefore harmonised at European level.
- Though based on EC Treaty article 175, it is equally important that Member States agree on one single, harmonised scope of the WEEE directive. Whether or not a product is in the scope determines a number of responsibilities for manufacturers and importers – who, it should be noted, place products onto the European single market, that is onto 15 and soon 25 different national markets. Those responsibilities concern, for example, the preparation of manuals to accompany the products, the provision of financial guarantees, ensuring that the products do not contain the substances mentioned in the RoHS directive.
- The definition of the scope of the directives should not have as a result that the responsibility and the cost for the recycling of a particular product type is shifted to an industry sector – or a group of producers – that does not manufacture these products.

3. Criteria for transposition

Orgalime recommends that Member States, when discussing the scope of the WEEE and RoHS directives and transposing these directives into national law, should take into account the following criteria:

- It is crucial that the Technical Adaptation Committee agrees on principles or criteria for the interpretation of the scope of WEEE and RoHS in a transparent way and that these criteria are discussed with industry.
- **The basic principles for the interpretation of the scope of Directive 2002/96/EC on WEEE** result from a combined reading of article 2.1, 2.3 and 3(a), which reveal six main criteria to be applied to equipment in order for it to be considered falling within the scope of the WEEE directive.

Equipment, which

- 1) 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, and
- 2) falls under the the categories set out in annex IA, and
- 3) is listed in annex I.B, and
- 4) is designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current, and
- 5) is not product which is intended for specifically military purposes, and
- 6) is not part of another type of equipment that does not fall under the scope of the directive,

is to be considered as being covered by directive 2002/96/EC.

- To our mind, **the basic principles for the interpretation of the scope of directive 2002/95/EC on RoHS** result from a combined reading of article 2 and article 3a, which reveal four main criteria to be applied to equipment in order for it to be considered falling within the scope of the RoHS directive.

Equipment, which

- 1) 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,
and
- 2) falls under the categories 1,2,3,4,5,6,7 and 10 of annex I.A of the WEEE directive or are electric light bulbs and luminaires in households,
and
- 3) is listed in annex I.B,
and
- 4) is designed for use with a voltage range not exceeding 1000 volts for alternating current and 1500 volts for direct current,

is to be considered as being covered by directive 2002/95/EC.

In other words, the scope of the RoHS directive hinges to a considerable extent on the scope of the WEEE directive. All the more reason, therefore, to harmonise the scope of the WEEE directive to ensure that the RoHS directive's main objective, i.e. free circulation of goods, is preserved.

According to article 2.3 of the RoHS directive, spare parts for the repair or to the re-use of EEE put on the market before 1 July 2006 are subject to an exemption from the scope of the RoHS directive.

Further exemptions from the requirements of article 4(1) are listed in the annex of the RoHS directive.

The RoHS directive, based on EC Treaty article 95, is harmonised at EU level and therefore cannot be modified by Member States.

- Both directives apply without prejudice to Community regulation 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.
- The reference to annex I.A and I.B of the WEEE directive in this text relates to these annexes as published in the Official Journal of the European Union of 13 February 2003.
- Military equipment is exempted from the WEEE directive (article 2.3). It should also be excluded from the RoHS directive.
- Notwithstanding the principles specified above, there are still products for which it is unclear whether or not they are included in the **scope of the WEEE directive** (e.g.: non electrically powered equipment, such as petrol driven lawn mowers).

Orgalime takes the view that **electrical and/or electronic components from equipment powered by other means than electricity** are not covered by the WEEE directive as article 3a of the WEEE-directive defines electric and electronic equipment as follows:

“Electrical and electronic equipment’ or ‘EEE’ means equipment which is dependent on electric currents or electromagnetic fields in order to work properly”.

In addition, article 2.1 of the WEEE directive clarifies that the directive does not apply to equipment that is part of another type of equipment that is not within the scope of the directive.

Consequently, tools and equipment powered by other means than electricity, such as pneumatic tools, combustion engines or petrol driven lawn mowers, are not covered by the directive since they are not electrical or electronic equipment.

Electronic components that are part of tools or equipment not powered by electricity are not covered by the directive, according to article 2.1.

4. Are there possibly other interpretation criteria apart from the text of the directive to define the scope?

We understand that Member States are currently considering in the TAC the following proposed factors for developing criteria for the scope of the WEEE and RoHS

directives. In this context, Orgalime would like to submit preliminary comments for the follow up discussions on each of such possible additional criteria:

- *Primary function of Product – is it affected by the use of electrical or electronic components?*

These directives aim to achieve environmental improvement linked to electrical and electronic equipment. The directives do not address products according to any specific functions. A combined reading of the reasoning, the objectives and the definitions of the directives clearly show this. Therefore *function* is not a relevant criterion for the scope of either the WEEE-directive or the RoHS-directive. Products that do not need to be powered by electricity to fulfil their primary function are not electrical or electronic equipment.

- *Manner in which product is marketed – is it marketed in the usual manner of electrical and electronic equipment?*

Marketing is a question of selling technique for a product and bears no relation to how it should be recycled. In the WEEE-directive it is clearly stated that “The provisions of this Directive should apply to products and producers irrespective of the selling technique,” (Whereas no 9). The reason for which this is specified is precisely to prevent that a producer should shift the cost of dealing with an end of life product to other producers by using a specific selling technique. Orgalime supports this approach and would not welcome any relaxing of such provisions. Furthermore, the way a product is marketed is an evolving process and would therefore not provide the necessary guidance for long-term planning.

- *Electrical/electronic content of product – does it contain only a minimal amount of electrical and electronic components?*

We see difficulties as to how this should be defined and evaluated.

- *Products with electrical components that do not need electricity to function*

Due consideration should be given as to how a product is powered (e.g. products not plugged into electrical mains network, neither using batteries). This is discussed also under the above-mentioned chapter 3, last bullet point, where Orgalime provides an explanation for its position that equipment not powered by electricity cannot be considered electrical or electronic equipment.

- *Are military/civil defence or security products included in the RoHS directive*

As cited above, military equipment is exempted from the WEEE directive (article 2.3) and should also be excluded from the RoHS directive.

- *Industrial/Professional versus household/consumer equipment – is the product specialised or particularly heavy-duty?*

The WEEE directive provides for an exemption of large scale industrial tools in category 6 of annex IA.

Some examples of large-scale industrial machinery/tools are conveyor systems, cranes, industrial installations including cabinets, machine tools. The exemption in category 6 of annex IA should apply also to comparable products for heavy industrial use (e.g.: mixers and ovens in a cake factory).

- Large industrial tools – how should one define this exemption?*

We propose to define a large scale industrial tool as a machine that is fixed and installed in industrial machinery or in an industrial building and which is designed for or is performing a specific industrial function (such as those specified above). Large-scale industrial tools have no intrinsic function themselves (unlike household equipment such as a television sets, dishwashers...).
- “Built-in” or installed products – is the equipment part of the fabric of a building or installed by a specialist?*

“Built in” or installed cannot serve as a single general defining factor for the scope of WEEE. There are examples of installed fixed equipment, such as certain types of large-scale air conditioning equipment, which is not within the scope, just as there are examples of installed/built-in equipment, such as large-scale white goods used in households, which do fall within the scope. Nevertheless the requirement for installation by a professional specialist or “built in” could be needed as additional criteria in some cases. Therefore the concepts of installation and “built-in” need further refinement.
- Is electrical and electronic equipment used in products outside the scope of the WEEE and RoHS directives – for example equipment used in cars, aircrafts or ships?*

Equipment which is used in products outside the scope of the directives are excluded from the scope of the WEEE directive according to article 2.1. We believe that such equipment should also be excluded from the RoHS directive.
- Likelihood of the product ending up in the municipal waste stream*

One of the objectives of the WEEE directive is to “minimise the disposal of WEEE as unsorted municipal waste” (recital 16). Therefore the likelihood that a product will not end up in the municipal waste stream can serve as a principle to exclude it from the scope. WEEE should not apply to products, which are not likely to end up in the municipal waste stream and which are not clearly defined by the scope of the directive.
- Distinction of user- that is professional use or possible household use*

The distinction between professional and household use is not related to the scope. This distinction is only relevant to decide whether the rules for producer responsibility regarding WEEE from private households apply, or if the rules regarding WEEE from users other than private household should be applied.
- Gap analysis dependent on cross referencing with existing WEEE take back schemes and clarification*

To provide comments on this question, Orgalime would require some further clarification.
- Does the WEEE directive apply to spare parts, components, consumables and accessories?*

There is a need for clarification of what is included and what is not included. We believe that spare parts, components, consumables and accessories, in so far as they are part of the product at the time of discarding (article 3.b of the WEEE directive), are part of WEEE and therefore included in the scope. However, spare parts,

components, consumables or accessories, which are not part of the product at the time of discarding, should not be considered WEEE.

We believe that certain principles published by the Commission in “The guide to the implementation of directives based on the New Approach and the old Approach” could serve as useful guidance.

For example, the guide gives the following description of products which have been repaired: “Products which have been repaired (for example following a defect) without changing the original performance, purpose or type, are not considered as new products according to the new approach directives.”