



**Assessment of the Scope of Directives
2002/96/EC on WEEE and 2002/95/EC on RoHS**

**Additional interpretations based on existing
Community legislation and Commission guidelines**

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.

This paper provides an assessment of the scope along the lines of the legal texts of Directive 2002/96/EC and Directive 2002/95/EC which entered into force upon their publication in the Official Journal of the EU on 13 February 2003.

The present position paper therefore does not intend to cover aspects related to practical take back operations that might be observed in the future.

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 the following 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 the WEEE directive is 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.
- Before trying to set up any kind of lists of products, which should be included or excluded from the scope, some basic criteria as specified hereunder need to be defined

3. Criteria for the determination whether a product falls within the scope of the WEEE (and RoHS) directives

The basic principles for the interpretation of the scope of **Directive 2002/96/EC** on **WEEE** result from a combined reading of article 2 and 3 (a), which reveal **seven main criteria** to be applied to equipment in order for it to be considered as falling within the scope of the WEEE directive. This means that all seven criteria must be met when a specific type of equipment is covered by the WEEE directive. In other words, if one criteria is not met, the specific type of equipment is to be considered as not being covered by directive 2002/96/EC. As not all of these criteria are very clear (e. g. annex I B) some of them need further clarification. This clarification is given hereafter. Where such clarification is needed because of the language of the directives (see point 5 for example) , we have referred to existing Community legislation and Commission guidelines.

Nr.	Criteria for quipment, which is considered as being covered by directive 2002/96/EC	Additional interpretations based on existing Community legislation and Commission guidelines (see footnotes)	Products out of the scope (examples)
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)]	To be “ dependent ” means that the equipment is powered by electricity (e.g. not petrol or gas) as its primary energy to fulfil its basic functions. (If electrical energy is used only for support or control functions (e.g.) this type of equipment is to be considered as <u>not</u> being covered by directive 2002/96/EC.)	<ul style="list-style-type: none"> - Combustion engine with an ignition - Petrol driven lawnmower - Pneumatic tools - Petrol and gas heating boilers
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)]	[No additional interpretation needed]	<ul style="list-style-type: none"> - Piezo-electric ignition (> 1500 V)
3	Equipment which falls “under the categories set out in annex I A” [WEEE Art 2.1 and Annex I]	[No additional interpretation needed]	Large-scale stationary industrial tools
4	Equipment which is 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 equipment quoted in Annex I B falls within the scope	<ul style="list-style-type: none"> - 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]	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 <i>fixed installation</i> it will not fall under the scope of the WEEE-directive. "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 ". ¹	Car radios
6	Equipment which is not covered by “specific Community waste management legislation.” [WEEE Art 2.2]		Batteries and accumulators
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]	

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) The EMC guidelines specify that a "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". This must not however be confused with an electrical installation.

4. Additional 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.
- 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 -or 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.