



**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

Brussels, 27 October 2003

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 almost all sectors included in the scope of directives 2002/96/EC on WEEE and 2002/95/EC on RoHS.

We recall industry's **key political principles** for transposing the WEEE and RoHS directives into national law given in our previous positions of 9 July and 11 September 2003:

- The RoHS directive is based on EC Treaty article 95 and therefore harmonised at EU level.
- Although the WEEE directive is based on EC Treaty 175, it is of equal importance that member states agree on one single, harmonized scope of the WEEE directive.
- Defining the scope of the directives should not result in shifting responsibilities and recycling costs of a particular product type to an industry sector not producing these products.
- Generic criteria should be defined in order to determine whether a product falls under the scope of the directives or not prior to trying to set up any kind of product lists.

In this paper, Orgalime has elaborated further on additional interpretation criteria in particular with respect to Directive 2002/95/EC on RoHS on the basis of the legal texts of these directives as entered into force with their publication in the Official Journal of the EU on 13 February 2003.

2. 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) WEEE, which reveal **seven main criteria (1-7)**, and of
- Directive 2002/95/EC on **RoHS** result from a combined reading of article 2 and 3a RoHS, which reveal **eight main criteria (1-8)**

to be applied to equipment in order for it to be considered falling within the scope of the respective directive.

This means that all criteria must be met when a specific type of equipment is covered by the WEEE and/or RoHS directives. 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 equipment, which is considered as being covered by directives 2002/96/EC on <u>WEEE</u> and 2002/95/EC on <u>RoHS</u>	Additional interpretations for <u>WEEE</u> based on existing Community legislation and Commission guidelines (see footnote)	Additional interpretations for <u>RoHS</u> based on existing Community legislation and Commission guidelines (see footnote)	Examples of products <u>out of</u> the scope of <u>WEEE</u>	Examples of products <u>out of</u> the scope of <u>RoHS</u>
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)] [RoHS 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 being <u>not</u> covered by directive 2002/96/EC.)	Identical to WEEE [RoHS Art. 3(a)]	<ul style="list-style-type: none"> - Combustion engine with an ignition - Petrol driven lawnmowers - Pneumatic tools - Petrol and gas stoves 	See WEEE

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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)] [RoHS Art. 3(a)]	[No additional interpretation needed]	[No additional interpretation needed] Identical to WEEE [RoHS Art. 3(a)]	Piezo-electric ignition (> 1500 V)	See WEEE
3	Equipment which falls “under the categories set out in annex I A” [WEEE Art 2.1] [RoHS Art. 2.1]	[No additional interpretation needed]	<ul style="list-style-type: none"> – Identical to WEEE, however: – Excluded: categories 8 and 9 of annex I.A of the WEEE directive – Additionally included are electric light bulbs and luminaries in households [RoHS Art. 2.1] 	Large-scale stationary industrial tools	<ul style="list-style-type: none"> – See WEEE – Medical Equipment – Measurement and Control Equipment
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]	At least the specific equipment quoted in Annex I B falls within the scope	There is no specific reference to Annex IB in the RoHS directive, but within the WEEE directive Annex IB is a list of products which shall be taken into account for the purpose of this Directive and which fall under the categories of Annex IA”. Given the reference to Annex I A in the RoHS directive, it can be assumed that the RoHS directive refers via this way to Annex I B, too.	<ul style="list-style-type: none"> - Luminaries in households - Filament lamps 	Not excluded are electric light bulbs and luminaries in households

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5	Equipment <u>provided</u> it “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 <u>device or unit of equipment</u> 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	There is no specific reference in the RoHS-directive to “equipment provided it is <u>not</u> part of another type of equipment that does not fall within the scope of this [i.e. the WEEE-] Directive”. <u>Not</u> under the scope of WEEE are products and components used in finished products that do not fall under the scope of WEEE. If the ROHS directive’s purpose was to ensure that the substances specified in it are no longer used in the manufacture of equipment covered by the WEEE directive it can be assumed that this proviso applies also to ROHS.	Car radio	Car radio

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		task, but not intended to be placed on the market as a single functional or commercial unit" . ⁱ			
6	Equipment, which is not covered by "specific Community legislation on safety and health requirements or specific Community waste management legislation". [WEEE Art 2.2] [RoHS Art. 2.2]			Batteries and accumulators	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]	Military equipment is exempted from the WEEE directive (article 2.3). Military equipment, which is intended for specifically military purposes should also be excluded from the RoHS directive. This can be backed up by reference to Article 296(1)b EC Treaty ⁱⁱ .		
8	RoHS only: "This Directive does not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1 July 2006". [RoHS Art. 2.3]	[Not applicable to WEEE]			

ⁱ 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.

ⁱⁱArticle 296 EC Treaty states:

“1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.”