



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 25 May 2011 (26.05)
(OR. fr)**

**Interinstitutional File:
2008/0240 (COD)**

**8117/11
ADD 1 REV 1**

**CODEC 483
ENV 228
MI 151**

ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat of the Council

to: COREPER/COUNCIL

No. Cion prop.: 17333/08 ENV 1019 MI 553 CODEC 1859

Subject: Proposal for a Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) (**first reading**)

- Adoption of the legislative act (LA + S)
- = Statements

COMMISSION STATEMENT ON THE SCOPE

(ARTICLE 2(2))

The Commission interprets Article 2(2) as meaning that electrical and electronic equipment which was outside the scope of Directive 2002/95/EC, but which would be covered by the new Directive, does not need to comply with the requirements of this Directive during a transitional period of eight years.

EEE which was outside the scope of Directive 2002/95/EC, but which would be covered by the new Directive, includes among others EEE covered by:

- the new category 11 in Annex I;
- the new definition of "dependent" in Article 3(2);
- "cables" mentioned in Article 4 and the related definition in Article 3(5);
- two-wheel vehicles which are not type-approved (Article 2(4)(f)).

During the transitional period of eight years, in the Commission's interpretation, it follows from Article 2(2) that Member States are obliged to allow electrical and electronic equipment which was outside the scope of Directive 2002/95/EC, but which would be covered by the new Directive, to continue to be made available on their market.

COMMISSION STATEMENT ON THE REVIEW (ARTICLE 24)

Pursuant to Article 24, the Commission intends to undertake, no later than three years after the entry into force of this Directive, an impact assessment (review) on Article 2 focussing on the changes in scope of this Directive compared to Directive 2002/95/EC which have not yet been impact-assessed.

This review, followed by a report to the Council and the European Parliament, may be accompanied by a legislative proposal, if the Commission deems appropriate. The extent of the review and of the legislative proposal remains to be determined by the Commission in accordance with its right of legislative initiative, in line with the Treaties.

COMMISSION STATEMENT ON NANO-MATERIALS (RECITAL 16 AND ARTICLE 6)

The Commission notes that work towards a common definition of nanomaterials is still on-going and intends to adopt a Commission Recommendation on a common definition for all legislative sectors in the near future. The Commission considers that the RoHS provisions cover different forms (including nanoforms) of the substances which are currently banned and those which will be in the future subject to a priority review under RoHS.

COMMISSION STATEMENT ON CORRELATION TABLES

The Commission recalls its commitment towards ensuring that Member States establish correlation tables linking the transposition measures they adopt with the EU directive and communicate them to the Commission in the framework of transposing EU legislation, in the interest of citizens, better law-making and increasing legal transparency and to assist the examination of the conformity of national rules with EU provisions.

The Commission regrets the lack of support for the provision included in the 2008 Commission proposal on the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast), which aimed at rendering the establishment of correlation tables obligatory.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of that proposal, can accept the substitution of the obligatory provision on correlation tables included in the text with a relevant recital encouraging Member States to follow this practice.

However, the position followed by the Commission in this file shall not be considered as a precedent. The Commission will continue its efforts with a view to finding, together with the European Parliament and the Council, an appropriate solution to this horizontal institutional issue.

STATEMENT BY THE ITALIAN DELEGATION

In Italy's view, the definition of "dependent", in Article 3(2) of the text proposed for adoption, cannot be considered in any way a precedent for other proposals for legislation on this subject, and particularly not for the recasting of the Directive on waste electrical and electronic equipment (WEEE), since the two directives have different legal bases and a different scope as well as differing aims.

STATEMENT BY SPAIN, ESTONIA, FINLAND, FRANCE, IRELAND AND SWEDEN

The above Member States:

- consider that, as a general rule and in the interests of legal certainty, it is inappropriate for the Commission to make interpretative statements on legislative texts, which should be comprehensible in themselves;
- note in this regard that the Commission has made a statement on the scope, which is at least in part derived from an interpretation of the phrase "dependent on electric currents or electromagnetic fields in order to work properly" in Article 3(a) of Directive 2002/95, and that the Commission's interpretation is neither universally shared nor supported by the aims or the wording of that Directive;

- regret that the Commission has made this statement and note that it is in any event for the Court of Justice alone to provide authoritative interpretations as to the meaning of Union law.

