



COUNCIL OF
THE EUROPEAN UNION

Brussels, 15 October 2009

14444/09

Interinstitutional File:
2008/0241 (COD)
2008/0240 (COD)

ENV 680
MI 376
CODEC 1189

NOTE

from : General Secretariat

to : Council

No. prev. doc.: 14146/09 ENV 647 MI 367 CODEC 1166

No. Cion prop.: 17367/08 ENV 1022 MI 554 CODEC 1863 - COM (2008) 810 final
17333/08 ENV 1019 MI 553 CODEC 1859 - COM(2008) 809 final

Subject :

- Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (**WEEE**) - (recast)
- 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 (**RoHS**) - (recast)
- = Policy debate

I. INTRODUCTION

On 16 December 2008 the European Commission submitted the two recast proposals listed above.

The recast WEEE proposal aims to protect the environment and human health by preventing or reducing the adverse impact of the generation and management of waste from electrical and electronic equipments (WEEE), by reducing the overall impact of resource use and improving the efficiency of such use.

The recast RoHS proposal lays down rules restricting the use of hazardous substances in electrical and electronic equipment (EEE) with a view to contributing to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

The Directives are complementary because both act jointly to avoid the escape of hazardous substances into the environment and to ensure a sustainable recycling loop of materials, free of hazardous substances.

The Working Party on the Environment has already discussed the recast proposals on several occasions.

The Opinion of the European Parliament is not expected before May 2010.

II. QUESTIONS FOR THE POLICY DEBATE

The Presidency would like to focus the debate on the link between the scopes of the two Directives.

Currently, the scopes of both Directives are defined in the WEEE. This by means of using definitions and Annexes with categories of equipment and examples of products. The RoHS Directive is based on Article 95 and the WEEE Directive is based on Article 175 of the Treaty. To achieve harmonisation of the scope of the RoHS Directive the Commission proposes to move the relevant Annexes from the WEEE Directive to the RoHS Directive. Furthermore, the WEEE Directive proposal includes a cross reference to these Annexes in the RoHS Directive, thus serving as a minimum binding list.

Member States have expressed concerns on the suggestion to define the scope of RoHS by using an exhaustive list of products. The list would need to be frequently updated via the committee procedure, to cover relevant products on the market today as well as to follow market developments. This could entail considerable efforts and transitional periods for each product which could be avoided if the scope had a more general definition. Furthermore, concerns have been raised that the Commission proposal could result in a decreased scope of the RoHS Directive in certain Member States, which have implemented a broader scope than the one of the current European Directive.

On the basis of the discussion in the Working Party, the Presidency has presented compromise texts for the two Directives with separate scopes in WEEE and RoHS. For RoHS an open scope is suggested, which implies that all EEE are included unless explicitly excluded. The Presidency takes the view that an open scope for RoHS with exclusions would adapt its scope to the current interpretation of many Member States and thereby obtain increased harmonisation and legal certainty for both producers and Member States.

As regards the WEEE Directive, the Presidency has proposed to re-introduce the Annexes setting out the categories of equipment and examples of products to be covered by the Directive, thus returning to the scope as it is defined in the existing legislation.

As a result, the scope of the two Directives could come to differ. An open scope in the RoHS Directive might entail a wider range of products covered by the ban on hazardous substances compared to the WEEE Directive. It might also increase environmental and health benefits by reducing the amounts of these hazardous substances in products and consequently in the waste chain. This could enhance the possibilities and economic profitability of recycling of WEEE and improve working conditions at the recycling plants. On the other hand, it could lead to additional costs for economic operators currently not covered by the scope of RoHS.

Ministers are invited to consider the following questions:

1. *Should the two Directives, WEEE and RoHS, have separate scopes taking account of their different legal bases and objectives?*

If yes,

- 2a. *Should the scope of the **RoHS Directive** be extended to cover all electrical and electronic equipment unless explicitly excluded?*
 - 2b. *Should the scope of the **WEEE Directive** be defined by the inclusion of a minimum list of electrical and electronic equipment (as in the existing legislation)?*

With a view to streamlining the debate, delegations are invited to submit written answers to the General Secretariat of the Council, in advance of the Council meeting, and preferably before 19 October 2009.
