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from : General Secretariat

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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 at Council (Environment) on 21 October 2009
• Written contributions from delegations

In reply to the questions by the Presidency (14444/09) for the policy debate at the Council (Environment) meeting on 21 October 2009, delegations will find annexed written contributions from EE/PL/SI.

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

Yes, the WEEE and RoHS Directives should have separate scopes because of their different legal bases and objectives.

2a. Should the scope of the RoHS Directive be extended to cover all electrical and electronic equipment unless explicitly excluded?

Yes, the scope of the RoHS Directive should be extended to cover all electrical and electronic equipment unless explicitly excluded. The exclusion list should be in the text of Directive and must not be easy to change. Estonia prefers all electrical and electronic equipment (EEE) to be within the scope if they fall under the definition of EEE.

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)?

No, for the WEEE Directive we prefer open scope without reference to categories (as a minimum list) but with an exclusion list. Estonia prefers all electrical and electronic equipment (EEE) to be within the scope if they fall under the definition of EEE unless explicitly excluded.

The exclusion lists in the WEEE and RoHS Directives do not have to be exactly the same – they can differ. The exclusion list in the WEEE Directive might be longer than the exclusion list for the RoHS Directive. It is possible that some EEE (for example some industrial tools) will be within the scope of the RoHS Directive, but will be outside the scope of the WEEE Directive. Reducing the amounts of these hazardous substances in products and consequently in the waste chain (especially in those cases where the end-user is responsible for recovery) will increase environmental and health benefits.

Estonia can be flexible and support open scope with reference to categories if the majority of Member States support it and it does not narrow the scope of the current WEEE Directive.

POLAND

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

Poland supports complete separation of the scopes of Directive 2002/95/EC (RoHS) and Directive 2002/96/EC (WEEE) by deleting references to Directive 2002/96/EC in Directive 2002/95/EC. The provisions of the Directives concern separate subject matters. The Directive concerning the detailed requirements on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) refers to products and substances contained in products, whereas the Directive on waste electrical and electronic equipment (WEEE) concerns waste and obligations relating to waste management. The RoHS Directive affects product development processes and entrepreneurs involved in the manufacturing supply chain. The Directive on waste electrical and electronic equipment (WEEE) contains provisions designed to ensure appropriate management of waste electrical and electronic equipment. The two Directives reflect completely distinct phases of the product life cycle, and they are based on different Treaty articles. Therefore, the scope of each Directive is distinct and separate rules should be developed in each case.

2a. Should the scope of the RoHS Directive be extended to cover all electrical and electronic equipment?

According to Poland, open scope should be adopted for the RoHS Directive, that is, its scope should not be determined or specified by way of additional annexes, but there should, however, be clear exclusion criteria. In Poland's opinion, exhaustive analysis of the impact of the proposal, in particular an economic analysis with special emphasis on environmental impacts on small and medium enterprises, would facilitate the final decision.

2b. Should the scope of the WEEE Directive be defined by the inclusion of a minimum list of electrical and electronic equipment (as in existing legislation)

The scope of the WEEE Directive should, according to Poland, be open, that is, all equipment which complies with the requirements of the definition of electrical and electronic equipment specified in the Directive should be included in its scope. If that solution is adopted, an exclusion list should be developed in a clear and unanimous way to prevent any excessively far-reaching interpretation of exclusion. This solution will eliminate the current problems faced by both producers and authorities as they have frequently had trouble determining whether the equipment placed on the market is subject to the provisions of the Directive. If open scope is adopted for the Directive, that will ensure legal stability and will guarantee that the law is applied uniformly in all the Member States.

SLOVENIA

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

SI supports separate scopes for the two Directives owing to their different legal bases and different objectives. We believe that the WEEE Directive, which focuses on the final phase of the life cycle of electrical and electronic equipment, will not adequately prevent the occurrence of hazardous substances in the environment, owing to the dispersion of, and limited collecting and recycling possibilities for, waste EEE. The RoHS Directive can be far more effective in achieving this goal, since it aims to prevent the release of hazardous substances into the environment at the EEE production phase, i.e. from relatively limited sources. This is of particular importance for the categories of equipment that are unlikely to be included in the scope of the recast WEEE Directive. The scope of the RoHS Directive, therefore, should not be limited to the relatively narrow range of EEE falling under the scope of the WEEE Directive.

2a. Should the scope of the RoHS Directive be extended to cover all electrical and electronic equipment unless explicitly excluded?

The RoHS Directive should include all EEE (open scope), with very limited, clearly defined exclusions. Clear and restrictive criteria as well as procedures for determining the excluded EEE should be defined in the recast RoHS Directive. These criteria should above all reflect the objective and purpose of the Directive, namely the acceptability of the risk posed by hazardous substances in EEE to human health and the environment, rather than just the economic and political interests of particular Member States.

SI is also in favour of including consumables, accessories and cables in the scope of the RoHS Directive, and could support a broad definition of EEE so as to also include within its scope equipment containing electrical and electronic components, regardless of the functional dependence on electrical current (e.g. electrical toys).

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 regard to the recast WEEE Directive, we are convinced that the inclusion of a minimum list of EEE is essential, and would therefore not be able to support open scope. The introduction of a minimum list of EEE into the recast WEEE is necessary to ensure legal certainty and improve the implementation of the Directive. It would also provide greater clarity for manufacturers in determining whether the Directive applies to a certain product. Additionally, by having Member States comply with at least the requirements as presented in the minimum list of EEE, a minimum of environmental protection would be ensured. At the same time, this would not prevent Member States from being more ambitious and also applying the provisions of the WEEE Directive to EEE not included in the list.