

## **INFORMAL RECORD OF TECHNICAL ADVISORY COMMITTEE SUB-GROUP MEETING ON THE SCOPE OF THE WEEE AND ROHS DIRECTIVES, BRUSSELS, 16 SEPTEMBER 2003**

### **SUMMARY**

Most Member States in the Technical Advisory Committee (TAC) agree on need for generic criteria to decide whether “grey area” products should be covered by the scope of the WEEE Directive or not. Discussion of possible criteria for deciding status of “grey area” products and to delineate more clearly the Directive’s exemptions for large-scale industrial tools and military equipment. Next step is for the Commission to draft a paper in light of Member States comments. It is suggested that Member States take a decision at the next TAC meeting, planned for November (date to be fixed).

### **MAIN POINTS OF DISCUSSION**

In initial discussion, a number of Member States said they supported the idea of having broad criteria which could guide decisions on “grey area” products. One Member State noted that the ROHS Directive took its scope from the WEEE Directive and argued that this scope should be as wide as possible on environmental grounds. Other Member States opposed the suggestion that the coverage of the ROHS Directive should be widened. The UK noted that Article 2 of the ROHS Directive said that it should apply to certain, not all of the categories of electrical and electronic equipment listed in the WEEE Directive annexes. The Council and Parliament had taken this conscious decision not to have a wider scope for ROHS than this. Environmental objectives should obviously be kept in mind, but the priority was to agree workable arrangements for determining the scope of WEEE and ROHS more clearly. It was a priority to make progress towards providing clarity for business. A number of other Member States supported this.

#### **Discussion of criteria**

A Member State introduced a short paper which proposed a set of criteria to help Member State enforcement authorities to decide whether particular products were within the scope of the WEEE Directive or not. This reflected some business lobbying they had received. It bore similarities to a list of ideas tabled by the Commission at the previous meeting, which had drawn on suggestions from Member States, including the UK. This list was considered in conjunction with the new paper.

The paper proposed the following criteria (*and that if any single criterion was not met, the product should fall outside the scope of the WEEE Directive*):

- Does the product fall within the voltage ratings stated in Article 3 (a) of the WEEE Directive ? If not it should be excluded (this might include high voltage switch gear)

- Does the product fall within the categories listed in Annex IA of the WEEE Directive? If not it should be excluded (e.g. large scale industrial tools, which are explicitly excluded – see below)
- Does the product fall within the categories listed in Annex 1B of the WEEE Directive? This would confirm exclusion of household luminaires and filament bulbs from the WEEE Directive.
- Is the product subject to “specific Community waste management legislation” (Article 2.2 of the WEEE Directive)? If it is (e.g. batteries), it should not be regarded as a product for the purposes of the WEEE Directive. (It should be noted, however, that batteries discarded together with EEE will need to be recovered according to the targets set in the WEEE Directive.)
- Is the product specifically intended for a military application ? Article 2.3 excludes products connected with national security and war materials.
- Does the product depend on electricity as its primary energy supply to fulfil its basic function? If not, the equipment should not fall into the scope of the WEEE Directive. For example, piezo-electric ignitions, petrol driven lawn mowers would be outside the scope.
- Is the product part of another product, which is outside the scope of the WEEE Directive? The intention here is to use definitions applied in the official Guidelines for implementation of the Electromagnetic Compatibility Directive (as amended) to exclude products which are not “finished products” having a “direct function”, i.e. that is an end-use specified by the manufacturer. A car radio is an example of an item that would be excluded under this criterion. Also, if the other product is a “fixed installation” it would not fall under the scope of the WEEE Directive. A “fixed installation” could be defined as an assembly of a number of pieces of equipment intended to work together in a given location but not marketed as a single functional unit. This would exclude fixed installations like heating plants.

## **Discussion**

In discussion, the following points were:

- There seemed to be broad support from most Member States for these criteria. However, it was agreed that further specification was needed in some instances. It was agreed that a closer definition of large scale industrial tools was needed. One Member State agreed to produce a definition drawing on industry suggestions. It would emphasise the “stationery” nature of such equipment.
- There was discussion of whether the criterion for excluding military equipment should actually be that the equipment was specifically “designed for” and “marketed for” military applications. The Commission invited Member States’ views on this. This might result in exclusion of a missile guidance system but not a PC capable of both military and civilian use. The UK suggested that Member State should consider the status of security as well as military equipment. The

Commission undertook to check if any judgements from the European Court of Justice provided any guidance on how the general military exemption from EU legislation should be specified in this case.

- A minimum electrical content had been suggested as an additional criterion, which might result in exclusion of, for example, some toys containing small electrical assemblies. Some Member States saw the collection and recycling of such toys as expensive and of questionable environmental value. However, others felt they should, in principle, be recovered. Several Member States felt it would be very difficult to identify a minimum electrical content for generic application.
- There was also brief discussion of how to distinguish between professional and possible household use of products. The UK noted that industrial products, like catering ovens, had tougher specifications than domestic ones; and agreed to consider further how this distinction might be defined for a generic criterion.
- There was not a consensus amongst Member States on how enforcement authorities should apply criteria to decide the status of “grey area” products under the WEEE Directive. Some thought the criteria might be applied systematically using a decision tree. Others, including the UK, spoke in favour of a more flexible approach, giving the enforcement authorities discretion to apply one or several criteria, as appropriate, to deciding the status of the product in question.

#### **Next steps**

- The Commission invited Member States to reflect on the criteria discussed and comment by 10 October.
- It asked Member States to consider whether each of the criteria should be applicable for WEEE, ROHS or both Directives.
- It asked Member States to consider how they might apply the criteria - using a decision tree or in a more flexible way.
- It invited Member States to consider guidance for business and others on which categories (Annexes 1A and 1B of the WEEE Directive) products fell into.
- The Commission undertook to prepare a paper, taking account of Member States’ views by late October, in time for a further discussion and decisions at the TAC planned for November.

**Your views**

**In the light of our ongoing commitment to consultation, we should be interested to have any comments you have on these matters. If you wish to respond, please do so no later than Monday 6 October to:**

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DTI - 18 September 2003