

# Position Paper

## UEAPME's position on the recasting of Directive 2002/96/CE on WEEE and Directive 2002/95/CE on RoHS

### General Remarks

The recasting aims at clarifying and simplifying the two directives as well as at revising them in the light of the first years of their implementation. UEAPME welcomes in general the recasting proposed by the European Commission, since there is a need for clarification and simplification. Moreover in general the efforts resulting in a reduction of significant barriers to trade and distortions of competition among companies within the European Economic Area, as well as administrative burdens, are welcome. However, in relation to the concept of European producers, it should be considered that this proposal can lead to a total transformation of some established national regulations.

On the other side the proposed amendments in relation to the collection rates and recovery rates are, in our view, completely incomprehensible and present serious data issues, as many Member States still have no data regarding the collection and treatment of WEEE. Nevertheless, the EU Commission has presented in this context, proposals for amendments with very far-reaching consequences. We would also welcome further measures to regulate cross-border distance/internet contracts. Although the directives only have an impact on a smaller fraction of UEAPME members, the magnitude of this impact is significant. The directives and especially the WEEE directive are hence considered to be important. In general waste is an important environmental issue for SMEs as all waste legislation has direct impacts and repercussions on them.

UEAPME has identified below the positive and negative aspects for the European SMEs of the recasting of these two Directives.

### WEEE

#### Positive aspects for SMEs

Article 2 together with Annex I of the RoHS Directive: clarification of the scope of both directives, which tackle the same kind of appliances. The harmonization of the scope will help in reducing bureaucracy.

Article 2.4: WEEE shall be classified as waste from private households or from users other than private households. This new differentiation is very useful, but would be more reader-friendly if the classification power of the WEEE would be transferred to a Committee according with Art. 5a paragraph 1-4 and Art.7 of Council Decision 1999/468/EC ("Comitology") observing the regulatory procedure with scrutiny (Art.8).

Article 3: New definitions for producer, distributor, importer, which have also a positive impact on the definition of their responsibility.

Article 5.2: Member States may decide that the distributors are no longer obliged to take back WEEE, provided that returning such waste is not thereby made more difficult for the final holder and provided that these systems remain free of charge for the final holder. This opens these activities to free competition.

Article 7.3: proposal for establishing a common methodology for the calculation of the total weight of electrical and electronic equipment placed on the national market.

Article 14: producers are allowed to show purchasers, at the time of sale of new product, the cost of collection, treatment and disposal in an environmentally sound way (“visible fee”)

Article 16: harmonisation of producers’ registration and reporting by making the national registers interoperable, which has also a positive impact on the free movement of goods. The foreseen interoperable national registers will substantially reduce the waste management.

Article 19: harmonisation of the penalties for not complying with the directive. The penalties should be effective, proportionate and dissuasive.

By harmonizing the registration and reporting of producers as well as the penalties for failure to comply, firms with activities in several EU countries could avoid problems. In fact the amount of red tape linked to waste issues is in many Member States well above admissible levels (over-implementation of Directives). For instance in Sweden there were problems with very hefty penalties, which could also been avoided in the future.

Article 20 and Annex 1: Inspection and monitoring. Check and monitoring obligations are an important provisions anti-circumvention measure, which help in establishing faire market conditions. We consider also positive the control of the procedures in the treatment plants.

## Negative aspects for SMEs

Article 2.1 and 2.3b: Equipment, which is specifically designed as part of another type of equipment that does not fall within the scope of this Directive and can fulfill its function also independently from this equipment, falls also under the scope. The new definition expands the scope considerably.

Article 3j: new definition of “producer of electrical and electronic equipment”: “Producer” means any natural or legal person who, is established within the Community and places electrical and electronic equipment from a third country onto the Community market. Even if it is positive to have a European definition of “producer”, this would reveal to be very difficult in the implementation phase and would open the door to too many free-riders. In order to avoid this it should exist a clearing house with the possibility to check and visualize the flow of goods and the financial compensation of the European collection and recovery systems. It should also exist a reciprocal enforcement and mutual legal assistance among Member States. The issue of an inadequate enforcement in the case of cross-border supply of goods is well known in respect of direct mail selling. Equally with this new definition of “producers” the entrepreneurs will encounter the same kind of problems. Moreover it will have also a relevant competitive impact among companies putting goods on the market of their Member State or from a third countries and companies receiving goods from another Member State.

Article 7: the new target-proposal (65% WEEE collection rate) is dangerous as in many Member States there are not enough data as for the recovery and treatment of WEEE. The average weight of electrical and electronic equipment placed on the market in the two preceding years is reference for the calculation of the collection rate. This reference does not correspond approximately to the life expectancy of the electrical and electronic appliances, which is nowadays of around 10-20 years. Moreover in many cases the purchase of new appliances is not meant to replace the old ones.

Article 12: financing in respect of WEEE from private households. The fact that business should pay in future for the collection of WEEE means new pressure on the private sector and also –in last instance- on the consumers. The Local authorities will probably not reduce the fee on waste. That means that the consumer will pay the fee on waste and contribute to the cost of collection for the producer when purchasing a new appliance.

## Mixed aspects for SMEs

Article 11: increase of recovery targets by 5% including re-use. This proposal could be analyzed from a double point of view. On the positive side, the repairing and fixing of appliances is one of the main activities for a certain category of SMEs, especially the craft ones and the smallest ones. It is also an important activity for social actors working in the sector of rehabilitating unemployed people. These actors, who are both complementary in the WEEE collection system, contribute in an important way to the re-use of appliances and employ many people in this activity, some of them being less qualified persons and in need of help to get back a job. An increase of the re-use rate can directly have a positive impact on the economical activity of these actors. However, it is known that the re-use of electrical and electronic equipment under certain circumstances runs counter to the foreseen ecological benefit. For instance household appliances use more energy in the using phase than in the production or recovery one. This is of course not really in line with the current energy-efficiency trend. Moreover in the case of “re-use” many legal issues remain open such as: guarantee and product liability in particular in case of reconditioning and reparation of the appliance.

## RoHS

### Positive aspects for SMEs

Article 4.3: Gradual ban of substances for medical devices and monitoring and control instruments. With regard to the gradual application of the substances ban, beside the possibility of an extension of the exemption, it should also be foreseen a sale- rule of three years after the production. In fact these products are not mass-products, but produced in batch quantities.

### Negative aspects for SMEs

Article 2.3: scope. As in WEEE, equipment, which is specifically designed as part of another type of equipment that does not fall within the scope of this directive and can fulfil its function also independently from this equipment, falls also under the scope. The new definition expands the scope considerably

Article 4.7: Prevention/Addition of substances already regulated under REACH. Each substance which has been proposed for the recasting of the RoHS directive is already regulated under REACH. A double regulation of the same substances under two different pieces of legislation is against the principle of legal certainty. We recommend therefore maintaining the relevant list of substances under REACH and not to uptake it under RoHS.

Article 5: Adaptation of the annexes (ban and exemptions) to technical and scientific progress/Uniform maximum validity periods of four years for the exemption to the substances ban. We object this uniform limited validity of exemption. Taking into consideration the innovation and funding cycles of electrical and electronic devices, these time frames are not realistic and generate also a high degree of uncertainty in the markets. This is also not in compliance with the REACH regulation, where an exemption can be allocated case by case. For the review of individual exemptions from the substances ban we require a realistic time frame.

Article 7 and 14 till 16: Obligation of manufacturers, general principle of CE marking, rules and conditions for affixing the CE marking, presumption of conformity. These provisions specify the general declaration of conformity procedure. They are too comprehensive and cause extra administrative and financial burdens both on the producer and on the importer. We object the new obligations in relation to the EC Declaration of Conformity (technical documentation, internal control of production).

Article 10: Obligation of distributors. The obligations for the distributors are presented in a very comprehensive way. The distributor should verify electrical and electronic equipment in relation to the declaration of conformity. In case of not compliance it should make the necessary to bring the devices in conformity with the applicable requirements imposed. This commitment is too extensive as the distributor has virtually no chance to impact the product. At most the distributor should inform the manufacturer and a ban to put into circulation should be applicable.

Brussels, August 2009