

**Amended proposal for a Directive of the European Parliament and of the Council on the restriction on the use of certain hazardous substances in electrical and electronic equipment <sup>(1)</sup>**

(2001/C 240 E/37)

(Text with EEA relevance)

COM(2001) 316 final — 2000/0159(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 7 June 2001)*

## 1. BACKGROUND

Transmission of the Proposals to the Council and the European Parliament (COM(2000) 347 final — 2000/0159(COD)) in accordance with Article 175(1) of the Treaty: 28 July 2000

Opinion of the Economic and Social Committee: 29 November 2000

Opinion of the Committee of Regions: 14 February 2001

Opinion of the European Parliament — first reading: 15 May 2001

As regards adaptation of the Directive to technical and scientific progress, amendments 12 and 13 which deal with the consultation process before revising the Annex can be accepted.

Amendment 17 referring to adequate penalties.

Amendment 19 changing the date of entry into force (day of publication instead of 20th day after publication).

## 2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal establishes restrictions on the use of certain hazardous substances — 'RoHS' — (heavy metals and brominated flame retardants) in electrical and electronic equipment. The restrictions will take effect in the year 2008. A technical Annex lists a number of derogations and may be modified by Committee procedure.

## 3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

### 3.1. Amendments accepted by the Commission

Amendment 1, referring to the potential for increasing profitability of recycling and protecting health by reducing hazardous substances.

Amendment 10 (first part) changing the starting date of phase-out from 2008 to 2006.

As regards the scope of the Directive, amendment 9 is acceptable. It adds light bulbs, household luminaires and compact fluorescent lamps in the scope of the Directive; includes category 10 of Annex I of WEEE in the scope of the RoHS; excludes spare parts placed on the market before 2006.

### 3.2. Amendments accepted in part or principle by the Commission

As regards the phase-out of hazardous substances, the Commission can accept in principle amendment 4 and amendment 10 second part subject to the following rewording: 'On the basis of a proposal from the Commission, the European Parliament and the Council shall decide, as soon as scientific evidence is available, and in accordance with the principles set out in the Chemicals Strategy, on the prohibition of other hazardous substances and the substitution thereof by more environment-friendly alternatives which ensure at least the same level of protection for consumers.' This rewording is necessary in order to link the widening of the scope of the Directive to the new chemicals strategy.

The Commission can accept amendment 22 subject to the following rewording: 'Member States shall ensure that new electrical and electronic equipment put on the market after 1 January 2006 do not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ether (PBDE).' This rewording is only of linguistic nature.

The Commission can accept amendment 23 subject to the following rewording: 'Article 4 shall not apply to electrical and electronic equipment falling under categories 8 and 9 of Annex I A to Directive ... [on waste electrical and electronic equipment], to spare parts for the repair of equipment placed on the market before 1 January 2006'. The Commission suggests in this rewording not to mention the word 'consumables' since it is not necessary to exclude consumables from the scope of the Directive in order to ensure that equipment placed on the market before 1 January could continue to function.

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 195.

The Commission can accept in principle amendment 35 subject to the following rewording in order to provide for more flexibility to the Commission and to take into account all possible scientific developments: 'In its review, the Commission shall consider to propose substituting brominated flame retardants when effective fire prevention alternatives are available, unless it can be demonstrated that brominated flame retardants do not give rise to concern in accordance with the principles set out in the Chemicals Strategy.'

The Commission can accept the reference to consumers safety in Article 5.1 introduced by amendment 11.

As regards the Annex, the Commission accepts in principle amendment 21 subject to the following; the deletions can be accepted whereas as regards, the inclusions the Commission can accept:

- '— Lead in high melting temperature type solders (i.e. tin-lead solder alloys containing more than 85 % lead)
- Lead in glass in electronic components
- Lead in piezoelectric devices
- Lead in servers, storage and storage array systems (exemption granted until 2010)'

As regards other provisions, the Commission can accept amendment 7 as follows: 'Whereas as a general principle, product reuse, refurbishment and extension of lifetime are beneficial'.

Amendment 18 sets the transposition deadline of the Directive within 18 months after its entry into force (Commission proposed 30.6.2004). This can be accepted in principle subject to possible review at the time of adoption of the Directive.

### 3.3. Amendments not accepted by the Commission

Amendment 2 states that the Directive is without prejudice to Directive 76/769 on the restrictions on

hazardous substances. The meaning and legal consequences of this amendment are unclear and the Commission suggest to avoid drafting that could lead to possible diverging interpretations in such a delicate area.

Amendment 3 refers to workers protection. Since it falls out of the scope of the Directive, it should not be accepted.

Amendment 8 deletes the reference to harmonization in the objectives of the Directive and cannot be accepted, since it is important to underline that the Directive has to be based on Article 95 of the Treaty.

Amendment 5 replaces the terms PBB and PBDE with 'brominated flame retardants' and cannot be accepted since the scope of the Directive is limited to PBB and PBDE.

Amendments 6, 11 and 33 add tasks and conditions to the work of the Committee set up under Article 5 which the Commission does not consider appropriate in light of the fact that they are not sufficiently precise and would risk to undermine the work of the Committee.

Amendment 15 requires the Commission to take into account technical data provided to it by 2003. This commitment in a legal text cannot be accepted, although the Commission will certainly take into account all relevant information made available to it.

Amendment 34 cannot be accepted since the Commission has accepted in principle amendments 4 and 35, which make 34 superfluous.

### 3.4. Amended proposal

Having regard to Article 250, paragraph 2, of the EC Treaty, the Commission modifies its proposals as indicated above.