EUROPEAN PARLIAMENT

Procedure : **2008/0240(COD)**

Document stages in plenary

Document selected : A7-0196/2010

Texts tabled :	Debates :	Votes :	Texts adopted :
A7-0196/2010	PV 22/11/2010 - 18 CRE 22/11/2010 - 18	PV 24/11/2010 - 8.5 Explanations of votes Explanations of votes	P7_TA(2010)0431

Texts adopted

Wednesday, 24 November 2010 - Strasbourg **Provisional edition**

Restriction of the use of certain hazardous substances in electrical and electronic equipment ***I

P7_TA-PROV(2010)0431 **A7-0196/2010**

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European Parliament legislative resolution of 24 November 2010 on the 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 (recast) (COM (2008)0809 – C6-0471/2008 – 2008/0240(COD))

(Ordinary legislative procedure: first reading - recast)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2008)0809**),

– having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0471/2008),

– having regard to the Commission communication to Parliament and the Council entitled: 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (**COM(2009)0665**),

– having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 10 June 2009[(1)] ,

– having regard to the opinion of the Committee of the Regions of 4 December 2009[(2)] ,

– having regard to the undertaking given by the Council representative by letter of 12 November 2010 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts[3] ,

– having regard to the letter of 11 November 2009 from the Committee on Legal Affairs to the Committee on the Environment, Public Health and Food Safety in accordance with Rule 87(3) of its Rules of Procedure,

– having regard to Rules 87 and 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety (**A7-0196/2010**),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Approves its statement annexed to this resolution;

3. Takes note of the Commission statements annexed to this resolution;

4. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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(1) OJ C 306, 16.12.2009, p. 36.
(2) OJ C 141, 29.5.2010, p. 55.
(3) OJ C 77, 28.3.2002, p. 1.

Position of the European Parliament adopted at first reading on 24 November 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast)

P7_TC1-COD(2008)0240

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee[1] ,

Having regard to the opinion of the Committee of Regions[2] ,

Acting in accordance with the ordinary legislative procedure[3] ,

Whereas:

(1) A number of substantial changes are to be made to Directive 2002/95/EC of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment [(4)] . In the interest of clarity, that Directive should be recast.

(2) The disparities between the laws or administrative measures adopted by the Member States as regards the restriction of the use of hazardous substances in electrical and electronic equipment could create barriers to trade and distort competition in the ***Union*** and may thereby have a direct impact on the establishment and functioning of the internal market. It therefore appears necessary to ***lay down*** the ***rules*** in this field and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

(3) Directive 2002/95/EC provides that the Commission shall review the provisions of that Directive, in particular, in order to include in the scope equipment which falls under certain categories and to study the need to adapt the list of substances on the basis of scientific progress, taking into account the precautionary principle, as endorsed by Council Resolution of 4 December 2000.

(4) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste [(5)] gives first priority to prevention in waste legislation. Prevention is defined inter alia as measures that reduce the content of harmful substances in materials and products.

(5) The Council Resolution of 25 January 1988 on a Community action programme to combat environmental pollution by cadmium [(6)] invited the Commission to pursue without delay the development of specific measures for such a programme. Human health also has to be protected and an overall strategy that in particular restricts the use of cadmium and stimulates research into substitutes should therefore be implemented. That Resolution stresses that the use of cadmium should be limited to cases where such use is suitable and where safer alternatives do not exist.

(6) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants [(7)] recalls that the objective of protecting the environment and human health from persistent organic pollutants cannot be sufficiently achieved by the Member States, owing to the transboundary effects of those pollutants, and can therefore be better achieved at Union level. Pursuant to that Regulation, releases of persistent organic pollutants, such as dioxins and furans, which are unintentional by-products of industrial processes, should be identified and reduced as soon as possible with the ultimate aim of elimination, where feasible.

(7) The available evidence indicates that measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment (WEEE) as set out in Directive 2002/96/EC of 27 January 2003 of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)[(8)] are necessary to reduce the waste management problems linked to the heavy metals concerned and the flame retardants concerned. In spite of those measures, however, significant parts of WEEE will continue to be found in the current disposal routes ***inside or outside the Union*** . Even if WEEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment, ***especially when treated in less than optimal conditions*** .

(8) Taking into account technical and economic feasibility, including for small and medium sized enterprises (SMEs), the most effective way of ensuring the significant reduction of risks to health and the environment relating to those substances which can achieve the chosen level of protection in the ***Union*** is the substitution of those substances in electrical and electronic equipment by safe or safer materials. Restricting the use of those hazardous substances is likely to enhance the possibilities and economic profitability of recycling of WEEE and decrease the negative health impact on workers in recycling plants.

(9) The substances covered by this Directive are scientifically well researched and evaluated and have been subject to different measures both at ***Union*** and at national level.

(10) The measures provided for in this Directive take into account existing international guidelines and recommendations and are based on an assessment of available scientific and technical information. The measures are necessary to achieve the chosen level of protection of human and animal health and the environment, ***with due respect for the precautionary principle,*** and having regard to the risks which the absence of measures would be likely to create in the ***Union*** . The measures should be kept under review and, if necessary, adjusted to take account of available technical and scientific information. ***The annexes to this Directive should be reviewed periodically to take into account, inter alia, Annexes XIV and XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency [(9)] . In particular, the risks to human health and the environment arising from the use of Hexabromocyclododecane (HBCDD), Bis (2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP) and Dibutylphthalate (DBP) should be***

considered as a priority. With a view to further restriction of substances, the Commission should re-investigate the substances, which were subject to previous assessments, in accordance with the new criteria of this Directive as part of the first review.

(11) This Directive supplements the general ***Union*** waste management legislation, such as Directive 2008/98/EC ***and Regulation (EC) No 1907/2006*** .

(12) A number of definitions should be included in this Directive in order to specify its scope. In addition, the definition of 'electrical and electronic equipment' should be complemented by a definition of 'dependent', to cover the multipurpose character of certain products, where the intended functions of electrical and electronic equipment are to be determined on the basis of objective characteristics, such as the design of the product and its marketing.

(13) Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of eco-design requirements for energy-using products[(10)] enables the adoption of specific eco-design requirements for energy-using products which may also be covered by this Directive. Directive 2005/32/EC and the implementing measures adopted pursuant to it are without prejudice to ***Union*** waste management legislation.

(14) This Directive should apply without prejudice to ***Union*** legislation on safety and health requirements and specific ***Union*** waste management legislation, in particular Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators[(11)] and Regulation (EC) 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants[(12)] .

(15) The technical development of electrical and electronic equipment without heavy metals, PBDE and PBB should be taken into account.

(16) As soon as scientific evidence is available, and taking into account the precautionary principle, the ***restriction*** of other hazardous substances***, including any substances of very small size or internal or surface structure (nanomaterials) which may be hazardous due to properties relating to their size or structure,*** and their substitution by more environmentally friendly alternatives which ensure at least the same level of protection of consumers should be examined ▌ . ***To this end, the review and amendment of the list of restricted substances in Annex II should be coherent, should maximise synergies with, and should reflect the complementary nature of the work carried out under*** other ***Union*** legislation, and in particular ***under*** Regulation (EC) No 1907/2006 ***while ensuring the mutually independent functioning of this Directive and that Regulation*** . ***Consultation with the relevant stakeholders should be carried out and*** specific account should be taken of the potential impact on SMEs.

(17) The development of renewable forms of energy is one of the Union's key objectives, and the contribution made by renewable energy sources to environmental and climate objectives is crucial. Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources [(13)] recalls that there should be coherence between those objectives and the remainder of the Union's environmental legislation. Consequently, this Directive should not prevent the development of renewable energy technologies that have no negative impact on health and the environment and that are sustainable and economically viable.

(18) Exemptions from the substitution requirement should be permitted if substitution is not possible from the scientific and technical point of view, taking specific account of the situation of SMEs or if the negative environmental, health ***and consumer safety*** impacts caused by substitution are likely to outweigh the ▌ environmental, ***health and consumer safety*** benefits of the substitution or the ▌ reliability of substitutes is not ensured. ***The decision on exemptions and the length of possible exemptions should take into account the availability of substitutes and the socio-economic impact of substitution. Life-cycle thinking on the overall impacts of the exemption should apply, where relevant.*** Substitution of the hazardous substances in electrical and electronic equipment should also be carried out in a way so as to be compatible with the health and safety of users of electrical and electronic equipment. The placing on the market of medical devices requires a conformity assessment procedure, according to Council Directive 93/42/EEC of 14 June 1993 concerning medical devices[(14)] and Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on *in vitro* diagnostic medical devices[(15)] , which could require the involvement of a notified body designated by competent authorities of Member States. If such a notified body certifies that the safety of the potential substitute for the intended use in medical devices or in vitro medical devices is not demonstrated, this will be viewed as a clear negative socio-economic, health and consumer safety impact. It should be possible to apply for exemptions of equipment coming under the scope of this Directive from the date of its entry into force, even when that is before the actual inclusion in the scope of that equipment.

(19) Exemptions from the ***restriction*** for certain specific materials or components should be limited in their scope

and duration , in order to achieve a gradual phase-out of hazardous substances in electrical and electronic equipment, given that the use of those substances in such applications should become avoidable.

(20) As product reuse, refurbishment and extension of lifetime are beneficial, spare parts need to be available.

(21) Procedures for assessing the conformity of electrical and electronic equipment subject to this Directive should be consistent with the relevant ***Union*** legislation and in particular Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products[(16)] . Harmonising conformity assessment procedures should give manufacturers legal certainty as to what they have to provide as proof of compliance to the authorities throughout the ***Union*** .

(22) The conformity marking applicable for products at ***Union*** level, CE marking, should also apply to electrical and electronic equipment subject to this Directive.

(23) The market surveillance mechanisms laid down by Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products[(17)] would ensure the safeguard mechanisms to check compliance with this Directive.

▌

(24) There is a need for uniform conditions for implementing this Directive, particularly with regard to the guidelines and format of applications for exemptions. According to Article 291 of the Treaty on the Functioning of the European Union (TFEU), rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [(18)] continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable .

(25) ***For the purposes of achieving the objectives of this Directive*** the Commission should be empowered to ***adopt delegated acts in accordance with Article 290 of the TFEU in respect of amendments to Annex II, detailed rules for complying with maximum concentration values, and the adaptation*** to technical and scientific progress ***of Annexes III and IV. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level*** .

(26) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(27) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables, illustrating, as far as possible, the correlation between this Directive, and the transposition measures and to make them public.

(28) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex VII, Part B.

(29) A thorough analysis of the coherence with Regulation (EC) No 1907/2006 should be carried out by the Commission when reviewing this Directive.

(30) Since the objective of this Directive, namely to establish restrictions on the use of hazardous substances in electrical and electronic equipment, cannot be sufficiently achieved by the Member States and can therefore be better achieved at ***Union*** level by reason of the scale of the problem and its implications in respect of other ***Union*** legislation on recovery and disposal of waste and areas of common interest, such as human health protection, the ***Union*** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules on the restriction of use of hazardous substances in electrical and electronic equipment with a view to contributing to the protection of human health and ***the environment, including*** the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Article 2

Scope

1. ***Subject to paragraph 2,*** this Directive shall apply to electrical and electronic equipment falling under the categories set out in Annex I ▌.

2. Without prejudice to Article 4(3) and 4(4), Member States shall provide that electrical and electronic equipment that was outside the scope of Directive 2002/95/EC, but which would be in non-compliance with this Directive, may nevertheless continue to be made available on the market until ... [(19)] ***.***

3. This Directive shall apply without prejudice to requirements of ***Union*** legislation on safety and health, on chemicals, in particular Regulation (EC) 1907/2006 as well as of specific ***Union*** waste management legislation.

4. This Directive does not apply to:

(a) equipment which is necessary for the protection of the essential interests of the security of Member States, including arms, munitions and war material intended for specifically military purposes;

(b) equipment designed to be sent into space;

(c) equipment which is specifically designed ***and to be installed*** as part of another type of equipment that ***is excluded or*** does not fall within the scope of this Directive, ***which*** can fulfil its function only if it is part of that equipment***, and which can be replaced only by the same specifically designed equipment*** ;
▌

(d) large-scale stationary industrial tools;

(e) large-scale fixed installations;

(f) means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved;

(g) non-road mobile machinery made available exclusively for professional use;

(h) active implantable medical devices;

(i) photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location to produce energy from solar light for public, commercial, industrial and residential applications;

(j) equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'electrical and electronic equipment' (hereinafter 'EEE') means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1500 volts for direct current;

(b) for the purposes of point (a), 'dependent' means, with regard to electrical and electronic equipment, needing electric currents or electromagnetic fields to fulfil at least one intended function;

(c) 'large-scale stationary industrial tools' means a large size assembly of machines, equipment, and/or components, functioning together for a specific application, permanently installed and de-installed by professionals at a given place, and used and maintained by professionals in an industrial manufacturing facility or research and development facility;

(d) 'large scale fixed installation' means a large size combination of several types of apparatus and, where applicable, other devices, which are assembled, installed by professionals and intended to be used permanently in a pre-defined and dedicated location, and to be de-installed by professionals;

(e) 'cables' means all cables with a rated voltage of less than 250V that serve as a connection or an extension to connect EEE to the electrical outlet or to connect two or more EEE to each other;

(f) 'manufacturer' means any natural or legal person who manufactures an EEE or who has an EEE designed or manufactured ***and markets it*** under his name or trademark;

(g) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes an EEE available on the market;

(h) 'importer' means any natural or legal person established within the ***EU*** , who places an EEE from a third country on the ***Union*** market;

(i) 'economic operators' means the manufacturer, the authorised representative, the importer and the distributor;

(j) 'making available on the market' means any supply of an EEE for distribution, consumption or use on the ***Union*** market in the course of a commercial activity, whether in return for payment or free of charge;

(k) 'placing on the market' means the first making available of an EEE on the ***Union*** market;

(l) 'harmonised standard' means a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services[(20)] on the basis of a request made by the Commission in accordance with Article 6 of Directive 98/34/EC;

(m) 'technical specification' means a document that prescribes technical requirements to be fulfilled by a product, process or service;

(n) 'authorised representative' means any natural or legal person established within the ***Union*** who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;

(o) 'CE marking' means a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in ***Union*** harmonisation legislation providing for its affixing;

(p) 'conformity assessment' means the process demonstrating whether the requirements of this Directive relating to an EEE, are met;

(q) 'market surveillance' means the activities carried out and measures taken by public authorities to ensure that EEE complies with the requirements set out in this Directive and do not endanger health, safety or other issues of public interest protection ;

(r) 'recall' means any measure aimed at achieving the return of a product that has already been made available to the end user;

(s) 'withdrawal' means any measure aimed at preventing a product in the supply chain from being made available on the market;

(t) 'homogeneous material' means ***one*** material of uniform composition throughout ***or a material, consisting of a combination of materials,*** that can not be mechanically disjointed into different materials, meaning that the materials can not ▌ be separated by mechanical actions such as unscrewing, cutting, crushing, grinding and abrasive processes;

(u) 'medical device' means a medical device within the meaning of point (a) of Article 1(2) of Directive 93/42/EC ***which is also electrical and electronic equipment*** ;

(v) 'in vitro diagnostic medical device' means in vitro diagnostic medical device within the meaning of point (b) of Article 1(2) of Directive 98/79/EC;

(w) 'active implantable medical device' means any active implantable medical device within the meaning of point (c) of Article 1(2) of Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices[(21)] ;

(x) 'industrial monitoring and control instruments' mean monitoring and control instruments designed for exclusively industrial or professional use;

(y) 'availability of a substitute' means that the substitute can be manufactured and delivered within a reasonable period of time as compared with the time required for manufacturing and delivering the substances listed in Annex II;

(z) 'reliability of a substitute' means the probability that an EEE using a substitute will perform a required function without failure under a stated condition for a stated period of time;

(aa) 'spare part' means a separate part of an EEE that can replace a part of an EEE. The EEE cannot function as intended without that part of the EEE. The functionality of EEE remains unchanged or is upgraded when the part is replaced by a spare part;

(ab) 'non-road mobile machinery made available exclusively for professional use' means machinery, with an on-board power source, the operation of which requires either mobility or continuous or semi-continuous movement between a succession of fixed working locations while working, and is made available only for professional use.

Article 4

Prevention

1. Member States shall ensure that EEE ***placed on the market,*** including ***cables and*** spare parts for its repair***,*** its reuse***, updating of its functionalities or upgrading of its capacity,*** does not contain the substances listed in

Annex II.

2. For the purposes of this Directive, the maximum concentration value by weight in homogeneous materials as specified in Annex II shall be tolerated. ***The Commission shall adopt, by means of delegated acts in accordance with Article 20 and subject to the conditions laid down in Articles 21 and 22, detailed rules for complying with these maximum concentration values taking into account, inter alia, surface coatings.***

3. Paragraph 1 shall apply to medical devices and monitoring and control instruments which are placed on the market from ***...*** (22) , to in vitro medical devices which are placed on the market from ... (23) * and to industrial monitoring and control instruments which are placed on the market from ***...*** (24) **.

4. Paragraph 1 shall not apply to ***cables or*** spare parts for the repair, ▌ the reuse***, the updating of functionalities or upgrading of capacity*** of the following:

(a) EEE placed on the market before 1 July 2006;

(b) medical devices placed on the market before ***...**** ;

(c) in vitro diagnostic medical devices placed on the market before ***...**** ;

(d) monitoring and control instruments placed on the market before ***... **** ;

(e) industrial monitoring and control instruments placed on the market before ***...***** ;

(f) EEE which benefited from an exemption and was placed on the market before that exemption expired ***as far as that specific exemption is concerned*** .

▌

5. Paragraph 1 shall not apply to the re-use of spare parts recovered from EEE put on the market before 1 July 2006 in equipment placed on the market before 1 July 2016, under the condition that re-use takes place in auditable closed-loop business-to-business return systems, and that re-use of parts is notified to the consumer.

▌

6. Paragraph 1 shall not apply to the applications listed in Annexes III and IV.

▌

Article 5

Adaptation of the Annexes to scientific and technical progress

1. ***For*** the purposes of adapting ***Annexes III and IV*** to scientific and technical progress, ***and in order to achieve the objectives set out in Article 1, the Commission shall*** adopt ***by means of individual delegated acts in accordance with Article 20 and subject to the conditions laid down in Articles 21 and 22 ,*** the following measures:

▌

(a) ***inclusion of*** materials and components of EEE ***for specific applications*** in Annexes III and IV ***on exemptions if such inclusion does not weaken the environmental and health protection of Regulation (EC) No 1907/2006 and*** where any of the following conditions is fulfilled:

– their elimination or substitution via design changes or materials and components which do not require any of the materials or substances referred to in Article 4(1) is scientifically or technically impracticable;

– the ▌ reliability of substitutes is not ensured;

– the ***total*** negative environmental***,*** health ***and*** consumer safety ▌ impacts caused by substitution are likely to outweigh the ***total*** environmental, health ***and*** consumer safety ▌ benefits thereof;

The decision on inclusion of materials and components of EEE in Annexes III and IV on exemptions and the length of possible exemptions shall take into account the availability of substitutes and the socio-economic impact of substitution. Decisions on the length of possible exemptions shall take into account any potential adverse impacts on innovation. Life-cycle thinking on the overall impacts of the exemption shall apply, where relevant.

(b) ***deletion of*** materials and components of EEE from Annexes III and IV where the conditions set out in point (a) are no longer fulfilled.

2. Measures adopted in accordance with point (a) of paragraph 1 shall***, for categories 1 to 7, 10 and 11 of Annex I,*** have a ***validity period of up to five years and, for categories 8 and 9 of Annex I, a validity period of up to seven years, to be decided on a case-by-case basis and which can be renewed.***

For the exemptions listed in Annex III on ... [25] ***, the maximum validity period, which can be renewed, shall, for categories 1 to 7 and 10 of Annex I, be five years from the date of entry into force of this Directive and, for categories 8 and 9 of Annex I, seven years from the dates laid down in Article 4(3), unless a shorter period is specified.***

For the exemptions listed in Annex IV on ...*, the maximum validity period, which can be renewed, shall be seven years from the dates laid down in Article 4(3), unless a shorter period is specified.

3. An application for granting, renewing or deleting an exemption shall be made to the Commission in accordance with Annex V.

4. The Commission shall:

(a) acknowledge receipt of an application in writing within 15 days of its receipt. The acknowledgement shall state the date of receipt of the application;

(b) inform without delay the Member States of the application and shall make the application and any supplementary information supplied by the applicant available to them;

(c) make a summary of the application available to the public;

(d) evaluate the application and its justification.

5. An application for renewal shall be made no later than 18 months before an exemption expires.

The Commission shall decide on an application for renewal no later than 6 months before the expiry date of the existing exemption unless specific circumstances justify other deadlines. The existing exemption shall in any case remain valid until a decision on the renewal application is taken by the Commission.

6. In the event that the application for renewal is rejected or that an exemption is deleted, there shall be a minimum period of 12 months and maximum period of 18 months from the date the decision is taken before the exemption expires.

7. Before Annexes are amended, the Commission shall inter alia consult ***economic operators,*** recyclers, treatment operators, environmental organisations and employee and consumer associations ***and make the comments received publicly available*** .

8. In order to ensure uniform conditions of implementation, the Commission, in accordance with the procedure referred to in Article 19(2), shall adopt a harmonised format for applications pursuant to paragraph 3 as well as comprehensive guidance for such applications, taking into account the situation of SMEs.

Article 6

Review and amendment of list of restricted substances in Annex II

1. With a view to achieving the objectives set out in Article 1 and taking account of the precautionary principle, a review, based on a thorough assessment, and amendment of the list of restricted substances in Annex II shall be considered by the Commission before ... [26] ***, and periodically thereafter on its own initiative or following the submission of a proposal by a Member State containing the information referred to in paragraph 2.***

The review and amendment of the list of restricted substances in Annex II shall be coherent with other legislation related to chemicals, in particular Regulation (EC) No 1907/2006, and shall take into account, inter alia, Annexes XIV and XVII to that Regulation. The review should use publicly available knowledge

obtained from the application of such legislation.

To review and amend Annex II, the Commission shall take special account of whether a substance, including substances of very small size or internal or surface structure, or a group of similar substances:

- ***(a) could have a negative impact during EEE waste management operations, including on the possibilities for preparing for the reuse of waste EEE or for recycling of materials from waste EEE;***
- ***(b) could give rise, given its uses, to uncontrolled or diffuse release to the environment of the substance or could give rise to hazardous residues or transformation or degradation products through the preparing for re-use, recycling or other treatment of materials from waste EEE under current operational conditions;***
- ***(c) could lead to unacceptable exposure of workers involved in the waste EEE collection or treatment processes;***
- ***(d) could be replaced by substitutes or alternative technologies which have less negative impacts.***

During that review, the Commission shall consult interested parties including economic operators, recyclers, treatment operators, environmental organisations and employee and consumer associations.

2. The proposals to review and amend the list of restricted substances, or a group of similar substances, in Annex II shall contain at least the following information:

- ***(a) precise and clear wording of the proposal;***
- ***(b) referenced and scientific evidence for the restriction;***
- ***(c) information on the use of the substance or the group of similar substances in EEE;***
- ***(d) information on detrimental effects and exposure in particular during waste EEE management operations;***
- ***(e) information on possible substitutes and other alternatives, their availability and reliability;***
- ***(f) justification for considering a Union-wide restriction as the most appropriate measure;***
- ***(g) socio-economic assessment.***

3. The measures referred to in this Article shall be adopted by the Commission by means of delegated acts in accordance with Article 20 and subject to the conditions laid down in Articles 21 and 22.

Article 7

Obligations of manufacturers

Member States shall ensure that:

(a) when placing ***EEE*** on the market, manufacturers ▌ ensure that they have been designed and manufactured in accordance with the requirements set out in Article 4;

(b) manufacturers ▌ draw up the required technical documentation and carry out the internal production control procedure ▌ in ***line with*** module A of Annex II to Decision No 768/2008/EC or have it carried out.

Where compliance of ▌ EEE with the applicable requirements has been demonstrated by that procedure, manufacturers ▌ draw up an EC declaration of conformity and affix the CE marking ***on the finished product*** .

Where other applicable Union legislation requires the application of a conformity assessment procedure which is at least as stringent, compliance with the requirements of Article 4(1) of this Directive may be demonstrated within the context of that procedure. A single technical documentation may be drawn up;

(c) manufacturers ▌ keep the technical documentation and the EC declaration of conformity for ten years after the EEE has been placed on the market;

(d) manufacturers ▌ ensure that procedures are in place for series production to remain in conformity. Changes in product design or characteristics and changes in the harmonised standards or in technical specifications by reference to which conformity of ▌ EEE is declared shall be adequately taken into account;

(e) ***manufacturers*** keep a register of ▌ non-conforming EEE and product recalls, and ▌ keep distributors informed ***thereof*** ;

(f) manufacturers ▌ ensure that their EEE bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the EEE does not allow it, that the required information is provided on the packaging or in a document accompanying the EEE;

(g) manufacturers ▌ indicate their name, registered trade name or registered trade mark and the address at

which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE. The address must indicate a single point at which the manufacturer can be contacted;

Where other applicable Union legislation contains provisions for the affixing of the manufacturer's name and address which are at least as stringent, those provisions shall apply;

(h) manufacturers who consider or have reason to believe that a EEE which they have placed on the market is not in conformity with ***this Directive*** immediately take the necessary corrective measures to bring that EEE into conformity, to withdraw it or recall it, if appropriate ***and*** immediately inform the competent national authorities of the Member States in which they made the EEE available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken;

(i) manufacturers ▌, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the EEE, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to ***ensure compliance with the provisions of this Directive of*** EEE which they have placed on the market.

Article 8

Authorised representatives

Member States shall ensure that:

(a) a manufacturer ***has the possibility to*** appoint an authorised representative ***by written mandate*** .

The obligations laid down in Article 7(a) and the drawing up of technical documentation shall not form part of the authorised representative's mandate;

(b) an authorised representative ***performs*** the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:

- keep the EC declaration of conformity and the technical documentation at the disposal of national surveillance authorities for ten years ***after the EEE has been placed on the market*** ;
- further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of an EEE ***with this Directive*** ;
- cooperate with the competent national authorities, at their request, on any action taken to ***ensure compliance with the provisions of this Directive of*** EEE covered by their mandate.

Article 9

Obligations of importers

Member States shall ensure that:

(a) importers ▌ place only compliant products on the ***Union*** market;

(b) before placing an EEE on the market importers ▌ ensure that the appropriate conformity assessment procedure has been carried out by the manufacturer. ***Importers will further*** ensure that the manufacturer has drawn up the technical documentation, that the EEE bears the CE marking and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 7(e) and (f).

Where an importer considers or has reason to believe that an EEE is not in conformity with Article 4, he ***does*** not place the EEE on the market until it has been brought into conformity ***and*** inform the manufacturer and the market surveillance authorities to that effect;

(c) importers ▌ indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE.

Where other applicable Union legislation contains provisions for the affixing of the importer's name and address which are at least as stringent, those provisions shall apply;

▌

(d) ***importers, in order to ensure compliance with the provisions of this Directive*** , ▌ keep a register of ▌ non-***compliant*** EEE and EEE recalls, and ▌ keep distributors informed ***thereof*** ;

(e) importers who consider or have reason to believe that an EEE which they have placed on the market is not in conformity with this Directive ▌ immediately take the corrective measures necessary to bring that EEE into conformity, to withdraw it or recall it, if appropriate ***and*** immediately inform the competent national authorities of the Member States in which they made the EEE available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken;

(f) importers ***keep*** , for ten years ***after the EEE has been placed on the market,*** a copy of the EC declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request;

(g) importers, ▌ further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of an EEE in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to ***ensure compliance with the provisions of this Directive of*** EEE which they have placed on the market.

Article 10

Obligations of distributors

Member States shall ensure that:

(a) when making an EEE available on the market, distributors ▌ act with due care in relation to the requirements applicable ***in particular by verifying that the EEE bears the CE marking, that it is accompanied by the required documents in a language which can be easily understood by consumers and other end-users in the Member State in which the EEE is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Articles 7(f) and 7(g) and Article 9(c);***

(b) ▌ where a distributor considers or has reason to believe that an EEE is not in conformity with Article 4, he ***does*** not make the EEE available on the market until it has been brought into conformity***, and informs*** the manufacturer or the importer to that effect as well as the market surveillance authorities;
▌

(c) distributors who consider or have reason to believe that an EEE which they have made available on the market is not in conformity with this Directive ▌ make sure that the corrective measures necessary to bring that EEE into conformity, to withdraw it or recall it, if appropriate, are taken ***and*** immediately inform the competent national authorities of the Member States in which they made the EEE available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken;

(d) distributors ▌ , further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of ▌ EEE. They ▌ cooperate with that authority, at its request, on any action taken to ***ensure compliance with the provisions of this Directive of the EEE*** which they have made available on the market.

Article 11

Cases in which obligations of manufacturers apply to importers and distributors

Member States shall ensure that an importer or distributor ***is*** considered a manufacturer for the purposes of this Directive and ***that*** he ***is*** subject to the obligations of the manufacturer under Article 7, where he places ▌ EEE on the market under his name or trademark or modifies ▌ EEE already placed on the market in such a way that compliance with the applicable requirements may be affected.

Article 12

Identification of economic operators

Member States shall ensure that economic operators ▌ , on request, identify the following to the market surveillance authorities, for ten years:

(a) any economic operator who has supplied them with an EEE;

(b) any economic operator to whom they have supplied an EEE.

Article 13

EC declaration of conformity

1. The EC declaration of conformity shall state that the fulfilment of requirements specified in Article 4 has been demonstrated.

2. The EC declaration of conformity shall have the model structure and shall contain the elements specified in Annex VI and shall be updated. ***It shall be translated into the language or languages required by the Member State on the market of which the product is placed or made available.***

Where other applicable Union legislation requires the application of a conformity assessment procedure which is at least as stringent, compliance with the requirements of Article 4(1) of this Directive may be demonstrated within the context of that procedure. A single technical documentation may be drawn up.

3. By drawing up the EC declaration of conformity, the manufacturer shall assume responsibility for the compliance of the EEE ***with this Directive*** .

Article 14

General principles of the CE marking

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

Article 15

Rules and conditions for affixing the CE marking

1. The CE marking shall be affixed visibly, legibly and indelibly to the ***finished*** EEE or to its data plate. Where that is not possible or not warranted on account of the nature of the EEE, it shall be affixed to the packaging and to the accompanying documents ▌ .

2. The CE marking shall be affixed before the EEE is placed on the market. ▌

▌

3. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and take appropriate action in the event of improper use of the marking. Member States shall also provide for penalties for infringements, which may include criminal sanctions for serious infringements. Those penalties shall be proportionate to the seriousness of the offence and constitute an effective deterrent against improper use.

Article 16

Presumption of conformity

1. In the absence of evidence to the contrary, Member States shall presume electrical and electronic equipment bearing the CE marking as conforming to this Directive.

2. Materials, components and ***EEE*** on which tests and measurements ***demonstrating compliance with the requirements of Article 4*** have been performed***, or which have been assessed,*** in accordance with harmonised standards, the references of which have been published in the Official Journal of the European Union, shall be presumed to comply with ▌ the ▌ requirements of this Directive ▌ .

Article 17

Formal objection to a harmonised standard

1. When a Member State or the Commission considers that a harmonised standard does not entirely satisfy the requirements which it covers and which are set out in Article 4, the Commission or the Member State concerned shall bring the matter before the Committee set up by Article 5 of Directive 98/34/EC, giving its

arguments. The Committee shall, having consulted the relevant European standardisation bodies, deliver its opinion without delay.

2. In the light of the Committee's opinion, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the harmonised standard concerned in or from the Official Journal of the European Union.

3. The Commission shall inform the European standardisation body concerned and, if necessary, request the revision of the harmonised standards concerned.

Article 18

Market surveillance and controls of EEE entering the ***Union*** market

Member States shall carry out market surveillance, in accordance with Articles 15–29 of Regulation (EC) No 765/2008.

Article 19

Committee

1. The Commission shall be assisted by the Committee set up by Article 39 of Directive 2008/98/EC.

2. Where reference is made to this paragraph, Article 5 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 20

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Article 4(2), Article 5(1) and Article 6 shall be conferred on the Commission for a period of 5 years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest 6 months before the end of the 5 year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes in accordance with Article 21.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 21 and 22.

Article 21

Revocation of the delegation

1. The delegation of power referred to in Article 4(2), Article 5(1) and Article 6 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 22

Objections to delegated acts

1. The European Parliament or the Council may object to the delegated act within a period of two months from the date of notification.

At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

▌

Article 23

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in ***Article 25*** at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 24

Review

1. No later than ... [27] the Commission shall examine the need to amend the scope of this Directive in respect of the EEE referred to in Article 2, and shall present a report thereon to the European Parliament and the Council accompanied by a legislative proposal, if appropriate, with respect to any additional exclusions related to that EEE.

2. No later than ... [28] * the Commission shall carry out a general review of this Directive, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.

Article 25

Transposition

1. Member States shall adopt and publish, by at the latest ... [29] **, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions ▌ .

▌

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26

Repeal

Directive 2002/95/EC as amended by the acts listed in Annex VII Part A is repealed with effect from the day after the date mentioned in the first subparagraph of Article 25(1) without prejudice to the obligations of the Member States relating to the time limits for transposition, into national law and application of the Directive set out in Annex VII, Part B.

References to the repealed acts shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VIII.

Article 27

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

Article 28

Addressees

This Directive is addressed to the Member States.

Done at ,

For the European Parliament For the Council

The President The President

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(1) OJ C 306, 16.12.2009, p. 36.
(2) OJ C 141, 29.5.2010, p. 55.
(3) Position of the European Parliament of 24 November 2010.
(4) OJ L 37, 13.2.2003, p. 19.
(5) ***OJ L 312, 22.11.2008, p. 3.***
(6) ***OJ C 30, 4.2.1988, p. 1.***
(7) ***OJ L 158, 30.4.2004, p. 7.***
(8) OJ L 37, 13.2.2003, p. 24.
(9) ***OJ L 396, 30.12.2006, p. 1.***
(10) OJ L 191, 22.7.2005, p. 29.
(11) OJ L 266, 26.9.2006, p. 1.
(12) OJ L 229, 30.4.2004, p. 5.
(13) ***OJ L 140, 5.6.2009, p. 16.***
(14) OJ L 169, 12.7.1993, p. 1.
(15) OJ L 331, 7.12.1998, p. 1.
(16) OJ L 218, 13.8.2008, p. 82.
(17) OJ L 218, 13.8.2008, p. 30.
(18) ***OJ L 184, 17.7.1999, p. 23.***
(19) * ***OJ: please insert date: 8 years after the entry into force of this Directive.***
(20) OJ L 24, 21.7.1998, p. 37.
(21) OJ L 189, 20.7.1990, p. 17.
(22) * ***OJ: please insert date: three years after the date of entry into force of this Directive.***
(23) ** ***OJ: please insert date: five years after the date of entry into force of this Directive.***
(24) *** ***OJ: please insert date: six years after the date of entry into force of this Directive.***
(25) * ***OJ: please insert the date of entry into force of this Directive.***
(26) * ***OJ: please insert date: 3 years after the entry into force of this Directive.***
(27) * ***OJ: please insert date: 3 years after the date of entry into force of this Directive.***
(28) ** ***OJ: please insert date: 10 years after the date of entry into force of this Directive.***
(29) *** OJ: please insert date:18 months after the publication of this Directive.

ANNEX I

Categories of electrical and electronic equipment covered by this Directive

1. Large household appliances
2. Small household appliances
3. IT and telecommunications equipment
4. Consumer equipment
5. Lighting equipment
6. Electrical and electronic tools (with the exception of large-scale stationary industrial tools)
7. Toys, leisure and sports equipment
8. Medical devices
9. Monitoring and control instruments including industrial monitoring and control instruments
10. Automatic dispensers
11. ***Other electrical and electronic equipment not covered by any of the categories above.***

ANNEX II

Restricted **substances referred to in Article 4*(1)* and maximum concentration values tolerated by weight in homogeneous materials**

Lead (0,1%)

Mercury (0,1%)

Cadmium (0,01%)

Hexavalent chromium (0,1%)

Polybrominated biphenyls (PBB) (0,1%)

Polybrominated diphenyl ethers(PBDE) (0,1%)

ANNEX III

Applications exempted from the *restriction* in Article 4(1) *as regards all EEE* [(1)]

1. Mercury in compact fluorescent lamps not exceeding 5 mg per lamp.
2. Mercury in straight fluorescent lamps for general purposes not exceeding:

- halophosphate	10 mg
- triphosphate with normal	5 mg

lifetime	
- triphosphate with long lifetime	8 mg.

3. Mercury in straight fluorescent lamps for special purposes.

4. Mercury in other lamps not specifically mentioned in this Annex.

5. Lead in glass of cathode ray tubes, electronic components and fluorescent tubes.

6. Lead as an alloying element in steel containing up to 0,35 % lead by weight, aluminium containing up to 0,4 % lead by weight and as a copper alloy containing up to 4 % lead by weight.

7. - Lead in high melting temperature type solders (i.e. lead-based alloys containing 85 % by weight or more lead),

- lead in solders for servers, storage and storage array systems, network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunications,
- lead in electronic ceramic parts (e.g. piezoelectronic devices).

8. Cadmium and its compounds in electrical contacts and cadmium plating except for applications banned under Directive 91/338/EEC[(2)] amending Directive 76/769/EEC[(3)] relating to restrictions on the marketing and use of certain dangerous substances and preparations.

9. Hexavalent chromium as an anti-corrosion of the carbon steel cooling system in absorption refrigerators.

10. Lead in lead-bronze bearing shells and bushes.

11. Lead used in compliant pin connector systems.

12. Lead as a coating material for the thermal conduction module c-ring.

13. Lead and cadmium in optical and filter glass.

14. Lead in solders consisting of more than two elements for the connection between the pins and the package of microprocessors with a lead content of more than 80 % and less than 85 % by weight.

15. Lead in solders to complete a viable electrical connection between semiconductor die and carrier within integrated circuit Flip Chip packages.

16. Lead in linear incandescent lamps with silicate coated tubes.

17. Lead halide as radiant agent in High Intensity Discharge (HID) lamps used for professional reprography applications.

18. Lead as activator in the fluorescent powder (1 % lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP (BaSi2O5:Pb) as well as when used as speciality lamps for diazo-printing reprography, lithography, insect traps, photochemical and curing processes containing phosphors such as SMS ((Sr,Ba)2MgSi2O7:Pb).

19. Lead with PbBiSn-Hg and PbInSn-Hg in specific compositions as main amalgam and with PbSn-Hg as auxiliary amalgam in very compact Energy Saving Lamps (ESL).

20. Lead oxide in glass used for bonding front and rear substrates of flat fluorescent lamps used for Liquid Crystal Displays (LCD).

21. Lead and cadmium in printing inks for the application of enamels on borosilicate glass.

22. Lead as impurity in RIG (rare earth iron garnet) Faraday rotators used for fibre optic communications systems.

23. Lead in finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with NiFe lead frames and lead in finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with copper lead frames.

24. Lead in solders for the soldering to machined through hole discoidal and planar array ceramic multilayer capacitors.

25. Lead oxide in plasma display panels (PDP) and surface conduction electron emitter displays (SED) used in structural elements; notably in the front and rear glass dielectric layer, the bus electrode, the black stripe, the address electrode, the barrier ribs, the seal frit and frit ring as well as in print pastes.

26. Lead oxide in the glass envelope of Black Light Blue (BLB) lamps.

27. Lead alloys as solder for transducers used in high-powered (designated to operate for several hours at acoustic power levels of 125 dB SPL and above) loudspeakers.

29. Lead bound in crystal glass as defined in Annex I (Categories 1, 2, 3 and 4) of Council Directive 69/493/EEC[(4)] .

30. Cadmium alloys as electrical/mechanical solder joints to electrical conductors located directly on the voice coil in transducers used in high-powered loudspeakers with sound pressure levels of 100 dB (A) and more.

31. Lead in soldering materials in mercury free flat fluorescent lamps (which e.g. are used for liquid crystal displays, design or industrial lighting).

32. Lead oxide in seal frit used for making window assemblies for Argon and Krypton laser tubes.

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(1) *The content of Annex V will be replaced by the recently approved version (OJ L 251, 25.9.2010, p. 28) at the moment of legal-linguistic finalisation.*

(2) OJ L 186, 12.7.1991, p. 59.

(3) OJ L 262, 27.9.1976, p. 201.

(4) OJ L 326, 29.12.1969, p. 36.

ANNEX IV

Applications exempted from the *restriction* in Article 4(1) *specific to medical devices* and *monitoring and control instruments*

Equipment utilising or detecting ionising radiation

1 Lead, cadmium and mercury in detectors for ionising radiation

2 Lead bearings in X-ray tubes

3 Lead in electromagnetic radiation amplification devices: micro-channel plate and capillary plate

4 Lead in glass frit of X-ray tubes and image intensifiers and lead in glass frit binder for assembly of gas lasers and for vacuum tubes that convert electromagnetic radiation into electrons

5 Lead in shielding for ionising radiation

6 Lead in X-ray test objects

7 Lead stearate X-ray diffraction crystals

8 Radioactive cadmium isotope source for portable X-ray fluorescence spectrometers

Sensors, detectors and electrodes (plus item 1)

1a Lead and cadmium in ion selective electrodes including glass of pH electrodes

1b Lead anodes in electrochemical oxygen sensors

1c Lead, cadmium and mercury in infra-red light detectors

1d Mercury in reference electrodes: low chloride mercury chloride, mercury sulphate and mercury oxide

Others

9 Cadmium in helium-cadmium lasers

10 Lead and cadmium in atomic adsorption spectroscopy lamps

11 Lead in alloys as a superconductor and thermal conductor in MRI

12 Lead and cadmium in metallic bonds to superconducting materials in MRI and SQUID detectors

13 Lead in counterweights

14 Lead in single crystal piezoelectric materials for ultrasonic transducers

15 Lead in solders for bonding to ultrasonic transducers

16 Mercury in very high accuracy capacitance and loss measurement bridges and in high frequency RF switches and relays in monitoring and control instruments not exceeding 20 mg of mercury per switch or relay

17 Lead in solders in portable emergency defibrillators

18 Lead in solders of high performance infrared imaging modules to detect in the range 8–14 µm

19 Lead in Liquid crystal on silicon (LCoS) displays

20 Cadmium in X-ray measurement filters

ANNEX V

Applications for exemptions, deletion of exemptions and renewal of exemptions as referred to in Article 5

Applications for exemptions, renewal of exemptions or, mutatis mutandis, for deleting an exemption may be submitted by a manufacturer, the authorised representative of a manufacturer, or any actor in the supply chain and shall include at least the following:

- ***(a) the name, address and contact details of the applicant;***
- ***(b) information on the material or component and the specific uses of the substance in the material and component for which an exemption, or its deletion, is requested and its particular characteristics;***
- ***(c) verifiable and referenced justification for an exemption, or its deletion, in line with the conditions established in Article 5;***
- ***(d) an analysis of possible alternative substances, materials or designs on a life-cycle basis, including, when available, information about independent research, peer-review studies and development activities by the applicant and an analysis of the availability of such alternatives;***
- ***(e) information on the possible preparing for re-use, recycling of materials from waste EEE, the appropriate treatment provisions according to Annex II of Directive (.../...) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE);***
- ***(f) other relevant information;***
- ***(g) the proposed actions to develop, request the development and/or to apply possible alternatives including a timetable for such actions by the applicant;***
- ***(h) where appropriate, an indication of the information which should be regarded as proprietary accompanied by verifiable justification;***
- ***(i) when applying for an exemption, proposal for a precise and clear wording for the exemption;***
- ***(j) a summary of the application.***

ANNEX VI

EC DECLARATION OF CONFORMITY

1. No … (unique identification of the EEE):

2. Name and address of the manufacturer or his authorised representative:

3. This declaration of conformity is issued under the sole responsibility of the manufacturer (or installer):

4. Object of the declaration (identification of EEE allowing traceability. It may include a photograph, where appropriate):

5. The object of the declaration described above is in conformity with Directive …/... on the restriction of the use of certain hazardous substances in electrical and electronic equipment

6. Where applicable, references to the relevant harmonised standards used or references to the ***technical*** specifications in relation to which conformity is declared:

8. Additional information:

Signed for and on behalf of: ……

(place and date of issue):

(name, function) (signature):

ANNEX VII

Part A

Repealed Directive with its successive amendments

(referred to in Article 26)

Directive 2002/95/EC of the European Parliament and of the Council	(OJ L 37, 13.2.2003, p. 19)
Commission Decision 2005/618/EC	(OJ L 214, 19.8.2005, p. 65)
Commission Decision 2005/717/EC	(OJ L 271, 15.10.2005, p. 48)
Commission Decision 2005/747/EC	(OJ L 280, 25.10.2005, p. 18)
Commission Decision 2006/310/EC	(OJ L 115, 28.4.2006, p. 38)
Commission Decision 2006/690/EC	(OJ L 283, 14.10.2006, p. 47)
Commission Decision 2006/691/EC	(OJ L 283, 14.10.2006, p. 48)
Commission Decision 2006/692/EC	(OJ L 283, 14.10.2006, p. 50)
Directive 2008/35/EC of the European Parliament and of the Council	(OJ L 81, 20.3.2008, p. 67)
Commission Decision 2008/385/EC	(OJ L 136, 24.5.2008, p. 9)

Part B

List of time-limits for transposition into national law

(referred to in Article 26)

Directive	Deadline for transposition
2002/95/EC	12 August 2004
2008/35/EC	-

ANNEX VIII

Correlation table [(1)]

Directive 2002/95/EC	This Directive
Article 1	Article 1
Article 2(1)	Article 2(1), 2(2), Annex I
Article 2(2)	Article 2(3)
Article 2(3)	Article 2(4), introductory wording
-	Article 2(4)
Article 3(a)	Article 3(a),(b)
Article 3(b)	-
-	Article 3(f)-(ab)
Article 4(1)	Article 4(1), Annex II
-	Article 4(3)-(4)
Article 4(2)	Article 4(6)
Article 4(3)	-
Article 5(1), introductory wording	Article 5(1), introductory wording
Article 5(1)(a)	Article 4(2)
Article 5(1)(b)	Article 5(1)(a), first and third indents
-	Article 5(1)(a), second indent Article 5(1)(a), final paragraph
Article 5(1)(c)	Article 5(1)(b)
-	Article 5(2) Article 5(3)-(6)
Article 5(2)	Article 5(7)
-	Article 5(8)
Article 6 first, third, fourth indents	Article 6
-	Article 7-18
Article 7	Articles 19-22
Article 8	Article 23
Article 9	Article 25

-	Article 26
Article 10	Article 27
Article 11	Article 28
-	Annex I- II
Annex, points 1-28	Annex III, points 1-28
Annex, point 29, first subparagraph	Annex III, point 29, first subparagraph
Annex, point 29, second subparagraph	Article 4(2)
Annex, points 30-32	Annex III, points 30-32
-	Annex IV, V, VI -VIII.

(1) *To be updated at the moment of legal-linguistic finalisation.*

ANNEX

Statements

Statement by the European Parliament

The European Parliament regrets that the Council was not prepared to accept the mandatory publication of correlation tables in the context of the recast of Directive 2002/95/EC. With a view to advancing a horizontal and inter-institutional solution of this matter, the European Parliament calls on the European Commission to make a report within six months after adoption of this agreement in plenary on the practice of Member States to draw up correlation tables in the field of EU environmental legislation and to make them public, including an assessment of how current practice affects the Commission's role of 'guardian of the Treaty' in controlling correct transposition of EU directives into national legislation in the field of environment protection.

Commission declaration on the scope (Article 2(2))

The Commission interprets Article 2(2) that electrical and electronic equipment that was outside of the scope of Directive 2002/95/EC, but which would be covered by the new Directive does not need to comply with the requirements of this Directive during a transitional period of 8 years.

EEE that was outside of the scope of Directive 2002/95/EC, but which would be covered by the new Directive includes amongst others EEE covered by:

- the new category 11 in Annex I;
- the new definition of 'dependent' of Article 3(b);
- 'cables' mentioned in article 4 and the related definition in Article 3(e);
- two-wheel vehicles which are not type-approved (Article 2(4)(f)).

During the transitional period of 8 years, in the Commission's interpretation, it follows from Article 2(2) that Member States are obliged to allow electrical and electronic equipment that was outside of the scope of Directive 2002/95/EC but which would be covered by the new Directive, to continue to be made available on their market.

Commission declaration on the review (Article 24)

Pursuant to Article 24, the Commission intends to undertake, no later than three years after the entry into force of this Directive, an impact assessment (review) on Article 2 focussing on the changes in scope of this Directive compared to Directive 2002/95/EC which have not yet been impact assessed.

This review, followed by a report to the Council and the European Parliament may be accompanied with a legislative proposal, if the Commission deems so appropriate. The extent of the review and of the legislative proposal remains to be determined by the Commission in light of its right of legislative initiative, in line with the Treaties.

Commission declaration on nano-materials (recital 16 and Article 6)

The Commission notes that work towards a common definition on nanomaterials is still on-going and intends to adopt a Commission Recommendation on a common definition for all legislative sectors in the near future. The Commission considers that the RoHS provisions cover different forms (including nanoforms) of the substances which are currently banned and those which will be in the future subject to a priority review under RoHS.

Commission declaration on correlation tables

The Commissions recalls its commitment towards ensuring that Member States establish correlation tables linking the transposition measures they adopt with the EU directive and communicate them to the Commission in the framework of transposing EU legislation, in the interest of citizens, better-law making and increasing legal transparency and to assist the examination of the conformity of national rules with EU provisions.

The Commission regrets the lack of support for the provision included in the 2008 COM proposal on the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast), which aimed at rendering the establishment of correlation tables obligatory.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of that proposal, can accept the substitution of the obligatory provision on correlation tables included in the text with a relevant recital encouraging Member States to follow this practice.

However, the position followed by the Commission in this file shall not be considered as a precedent. The Commission will continue its efforts with a view to finding together with the European Parliament and the Council an appropriate solution to this horizontal institutional issue.