



15th December 2005

European Commission
Rue de la Loi, 200
B-1049 Brussels

Ms. Mariane Klingbeil
Head of Unit
DG-Environment

Dear Mrs. Klingbeil,

As a follow up to several meetings with the industry, including EICTA and AeA members, we would like to request that the Commission include two further Questions and Answers in the Commission "Frequently Asked Questions" on Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substance in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment Directive (WEEE) (ie. FAQ). This would contribute to ensuring industry's compliance with the intent of the Directive and consistent implementation assumptions among companies.

Q&A I: Spare Parts

We understand that during the above mentioned meetings, it was suggested that the Commission would be prepared to include an explanation in its FAQ making it clear that the derogation for spare parts in Article 2(3) extends to unit service exchange as part of a producer's warranty and repair service. In this context, we would like to suggest the following text for a Commission Q&A:

1.8(b) Is the use of non-RoHS compliant units allowed in a unit service exchange offered as part of a producer's documented repair and warranty process for EEE put on the market before 1 July, 2006?

As the Directive does not apply to spare parts for the repair of EEE, the use of non-RoHS compliant main units for the sole purpose of providing repair and warranty services to users of non-RoHS compliant EEE put on the market before 1 July 2006 is permitted, when part of a producer's documented repair processes.

One of the standard approaches used by industry to provide warranty and repair support for EEE products is material, part or unit exchange. For example, for high-end products such as servers and storage systems, a non-functioning sub-assembly would be removed from the host product and a replacement sub-assembly is installed. The non-functioning sub-assembly is sent to a repair facility, where it may be repaired for further use as a repair part. Another example, for consumer products, would be for a digital camera where the non-functioning body of the camera would be replaced with a functioning camera body and returned to the customer. The unit supplied to the customer may be sourced from earlier repair events as a refurbished unit or an unused unit from service stock either being sourced from either inside or outside the EU. Customer satisfaction surveys have demonstrated that business and household consumers rank

the ability to get an immediate repair service as their top service demand of an EEE supplier. Service exchange is the quickest method to repair a product and ensure the customer satisfaction. It is, for example, the process through which 90% of notebook computer repairs are conducted on an industry-wide basis.

These service exchange units are regarded as "spare parts" by industry since a number of the key components which are supplied at the time of the original sale to the customer (eg. power cord, manuals, software) are not included with the replacement unit. These spare parts are part of the manufacturer's documented repair and replacement processes and they are clearly identified, typically by a separate part number as spare parts in the manufacturer's service event recommended spare parts list. For those involved in the use of these spare parts (e.g. manufacturer's authorized service and repair agents, manufacturer's own service technicians, independent repair services shops, etc.), their purpose and the way in which they can be utilized is clearly delimited.

Given the importance of this issue, we would be grateful if the Commission would consider our request to include the above boxed text in your FAQ document.

Q&A II: "New" and "Put on the Market"

Following discussion with the Commission's Services we understand that "new EEE put on the market" under Article 4 of the RoHS Directive is intended to mean new to the European market (see in Annex email from the Commission Services).

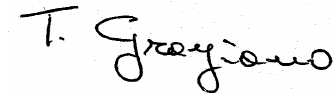
In order to ensure that this interpretation is understood and therefore followed by industry, we would be pleased if the Commission would include the following Q&A in its FAQ:

1.16 Does the substance restriction apply to EEE that has been placed on the market outside the EU only, refurbished and then put on the market in the EU after 1 July 2006?

A product that has been put on the market outside the EU only is "new" for the purposes of the RoHS Directive. Whether refurbished or simply resold within the EU, the EEE would be regarded as "new" in the sense of "new to the EU market" and therefore must comply with the prohibition in Article 4.

Please do not hesitate to contact us should you need any further information.

Yours sincerely,



Tony Graziano
Director Technical and Regulatory Policy

CC: Klaus Koegler, Anna Passera, Kurt Van Der Hertem

Michel Catinat, Luis Montoya, Michail Papadoyannakis, Dino Pinelli

About EICTA:

EICTA, founded in 1999 is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 55 major multinational companies and 35 national associations from 26 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

The membership of EICTA:

Direct Company Members:

Accenture, Adobe, Agilent, Alcatel, Apple, Bang&Olufsen, Blaupunkt, BenQ, Brother, Bull, Canon, Cisco, Corning, Dell, EADS, Epson, Ericsson, Fujitsu, Hitachi, HP, IBM, Infineon, Intel, JVC, Kenwood, Kodak, KonicaMinolta, Lexmark, LG Electronics, Loewe Opta, Lucent, Marconi, Microsoft, Motorola, NEC, Nokia, Nortel, Océ, Panasonic, Philips, Pioneer, Qualcomm, Samsung, Sanyo, SAP, Sharp, Siemens, Sony, Sun Microsystems, Symantec, Texas Instruments, Thales, Thomson, Toshiba, Xerox.

National Trade Associations:

Austria: FEEI; Belgium: AGORIA; Bulgaria: BAIT; Czech Republic: SPIS; Denmark: ITEK, ITB; Estonia: ITL; Finland: SET, FFII; France: ALLIANCE TICS, SIMAVELEC; Germany: BITKOM, ZVEI; Greece: SEPE; Hungary: IVSZ; Italy: ANIE, ASSINFORM; Ireland: ICT Ireland; **Latvia:** LITTA; Lithuania: INFOBALT; **Malta:** ITTS; Netherlands: ICT-Office; Norway: ABELIA, IKT Norge; Poland: KIGEIT, PIIT; Slovakia: ITAS; Slovenia: GZS; Spain: AETIC; Sweden: IT Företagen; Switzerland: SWICO, SWISSMEM; United Kingdom: INTELLECT; **Turkey:** ECID, TESID.

Annex: Copy of email received from Commission Services

-----Original Message-----

From: Anna.Passera@cec.eu.int [mailto:Anna.Passera@cec.eu.int]

Sent: Tuesday, November 30, 2004 2:28 AM

To: De Feo, Tiziana

Cc: Marianne.Klingbeil@cec.eu.int; Klaus.Koegler@cec.eu.int; Charlotte.BAIRD@cec.eu.int;

Fulvia.RAFFAELLI@cec.eu.int; Michail.Papadoyannakis@cec.eu.int; Quickert, Paul F;

Moskaluk, Ray; Goughan, Pat; Hermann, Ferdinand

Subject: RE: HP Inventory Movement doc - as discussed on 9 September

Dear Ms de Feo,

In reply to your question we understand that you are not requesting an exemption under the RoHS directive but you are requesting confirmation if HP practices for replacement of pre-RoHS EU products returned by the EU customer for warranty or repair with non-RoHS compliant equipment after 1 July 2006 where the replacement equipment has either:

- 1) Been previously put on the market within or outside the European Union and subsequently refurbished either within or outside the European Union or;
- 2) Not previously been put on the market either within or outside the European Union but has been transferred into the refurbished product inventory for use in break/fix repair.

The RoHS Directive (Article 2 §3) makes an explicit reference to exemption of parts but not whole equipment, therefore, the "refurbished" products you refer to should be considered "new" in the meaning of Article 4 §1, since, in principle, they are placed in the EU market for the first time. In fact, there is no guarantee that they have not been placed in the EU market before.

Should you want to apply for an exemption related to parts, please note that the request should fulfil the requirements of Article 5(1)(b) of the RoHS Directive. Applications for exemptions should be submitted by filling the attached check-list and substantiated by scientific evidence. The request will be submitted to the Technical Adaptation Committee (TAC) for a first screening.

Please note that the above remarks only express the views of the Commission' services and cannot provide any legal certainty since a binding interpretation of Community legislation is the exclusive competence of the European Court of Justice.

Best regards,
Anna Passera and Klaus Koegler.