

The scope of the RoHS-Directive

Manual of decision

This Guidance Document has been developed through discussions within the “EU RoHS Competent Bodies Network”.

It should be noted that the document is informative and advisory, but has no legal authority.

Authorities of individual Member States are bound by their own national legal structures and can only apply this guidance within the confines of those structures.

1. Version – 13. March 2007

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1. Purpose

This Manual of decision identifies the most important steps of the decision-making process when it is determined by Competent Authorities enforcing the RoHS-directive if an Electrical and Electronic Equipment (EEE) falls within the scope of Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS-directive).

This Manual is not legally binding, since only the European Court of Justice can make legally binding interpretation of community legislation.

This Manual is a document agreed between Member States co-operating within the **EU RoHS Competent Bodies Network** with the purpose of facilitating the effectiveness and conformity of enforcement of the RoHS-directive. The Manual and the questions of interpretation addressed herein have also been co-ordinated through the Commissions Technical Adaptation Committee, cf. article 7 of the RoHS-directive.

2. Structure of the manual

This manual is structured on the basis of a "decision tree" that illustrates the decision-making process, cf. chapter 4.

A general introductory chapter, cf. chapter 3, and a number of annexes that will give a more detailed explanation of specific problems and questions identified in the decision tree supplement the decision tree. It will be indicated in the decision tree whenever more information is available in the annexes.

This manual will, be available to the public on request and in a later stage will be made available on a web-site of the network between competent authorities for the RoHS -directive.

This manual will be supplemented with a database containing the most important and fundamental decisions of Member States and the Commission on the scope of the RoHS-directive as well as any rulings given by the European Court of Justice and national courts. Thus such database might have an illustrative function in relation to the manual.

This manual is intended to be revised on a continuous basis as discussions on this matter develop and new knowledge and enforcement practise emerges.

3. Background

The scope of the directive is defined in article 2 of the directive. The provision has the following wording:

"1. Without prejudice to Article 6, this Directive shall apply to electrical and electronic equipment falling under the categories 1, 2, 3, 4, 5, 6, 7 and 10 set out in Annex IA to Directive No 2002/96/EC (WEEE) and to electric light bulbs, and luminaries in households.

2. This Directive shall apply without prejudice to Community legislation on safety and health requirements and specific Community waste management legislation.

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3. This Directive does not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1 July 2006."

The definition of "electrical and electronic equipment" (hereafter: EEE) is given in article 3(a). The definition is:

"'Electrical and electronic equipment' or '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 falling under the categories set out in Annex IA to Directive 2002/96/EC (WEEE) and designed for use with a voltage rating not exceeding 1 000 volts for alternating current and 1 500 volts for direct current;"

The restriction imposed by the directive is defined in article 4(1). The provision has the following wording:

"1. Member States shall ensure that, from 1 July 2006, new electrical and electronic equipment put on the market does not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE). National measures restricting or prohibiting the use of these substances in electrical and electronic equipment which were adopted in line with Community legislation before the adoption of this Directive may be maintained until 1 July 2006."

It follows from the provisions of article 2, 3(a) and 4(1) that the fundamental questions that have to be answered when it is determined if EEE falls within the scope of the RoHS-directive are:

- A) Can the equipment be defined as EEE, cf. art. 3(a)?
- B) Does the EEE fall within categories 1, 2, 3, 4, 5, 6, 7 or 10 of Annex 1A of directive 2002/96/EC (WEEE-directive)?
- C) Is the EEE regulated by conflicting safety or health related provisions in other areas of the Community legislation or in specific Community waste legislation?
- D) Has the EEE been put on the market in a Member State before the 1 July 2006 or is the EEE a spare part for the repair of EEE?

The answer to each of these questions presupposes the analysis of a large number of other complex questions including questions pertaining to the categories listed in annex 1A of the WEEE-directive.

According to established case law of the European Union the interpretation of Community legislation, and therefor also the RoHS-directive must take special account of the purpose of the legislation concerned. This principle is therefor of fundamental importance when answering the questions indicated above.

The purpose of the RoHS -directive is to approximate the legislations concerning the restriction of use of hazardous substances in EEE and to contribute to the protection of human health and to environmentally sound recovery and disposal of waste EEE.

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The approximation of legislation is primarily ensured through the legal basis of the RoHS-directive, which is article 95, which provides for special procedures and requirements if a Member States wants to adopt stricter restrictions than those imposed by the RoHS -directive. Article 10 of the Treaty obliges Member States to work loyally to fulfil their obligations under Community legislation and therefore approximation is also ensured by close co-operation concerning the interpretation and enforcement of the RoHS-directive.

The interpretation and the enforcement of the RoHS-directive are the primary means to ensure the protection of human health and the environmentally sound recovery of EEE. With regard to the scope of the directive and the questions indicated above this implies that the provisions of article 2 and 3(a) must be interpreted in a way that gives the most effective protection of human health and the most environmentally sound recovery of EEE.

4. Decision tree

The decision tree is structured according to the chronological order in which the questions A – D indicated above in chapter 3 are normally answered when a competent authority have to decide whether or not to include a specific EEE under the scope of the RoHS-directive.

However, obviously, the order in which the questions are answered will ultimately not influence the final decision to include or exclude a specific EEE under the scope of the directive, as long as all questions are answered before a final decision is made.

The basis of the decision tree is made up of the questions A – D and therefore the decision tree is limited to those questions that ultimately have direct influence on the decision to include or exclude a specific EEE under the scope of the directive.

The question of the scope of the exemptions in the annex to the RoHS-directive will not be addressed in detail in the decision tree.

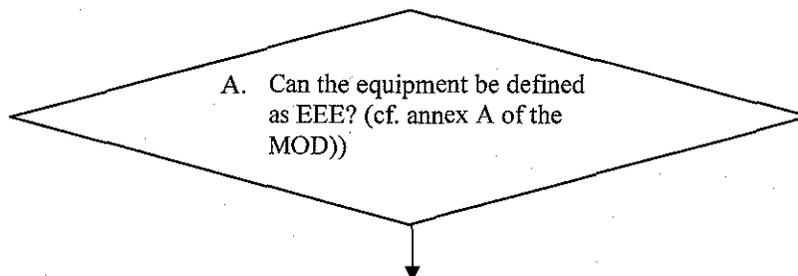
Practical information - references in this manual

In this manual references to other guidelines and explanatory documents are made as indicated below.

References to the Commissions document – “Frequently asked questions on the WEEE and RoHS Directives”, *Commission*, available at http://ec.europa.eu/environment/waste/weee_index.htm.

RoHS-directive

Decision tree – SCOPE

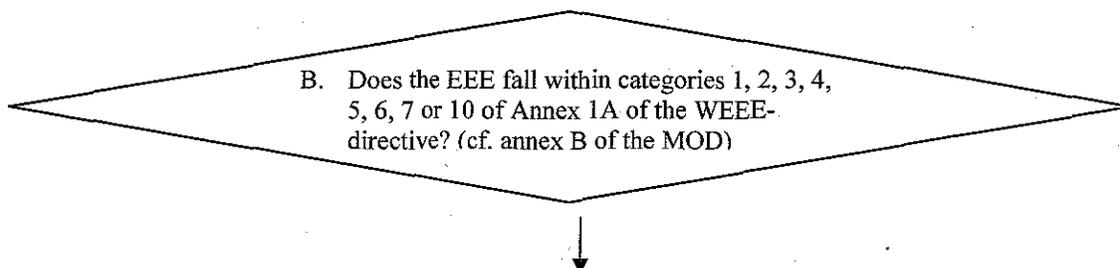


Cf. the definition in article 3(a) of the RoHS-directive.

- Is the EEE dependent on electric currents or electromagnetic fields to work properly? *or*
- Does the EEE generate, transfer or measure such currents and fields? *and*
- Is the EEE designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1.500 volts for direct current? (applies for both types of EEE)

References: *Commission*, point 1.2, number 1 and 2,

If yes



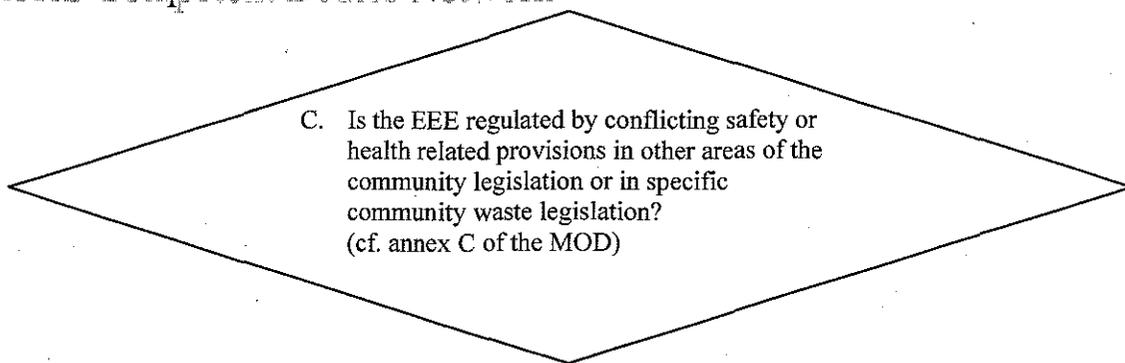
Cf. article 2(1) and the categories defined in annex 1A, as illustrated by annex 1B, of the WEEE directive, (The reference to the categories in annex 1A is specifically addressed to categories 1-7 or 10 of the WEEE-directive. The reference does not include other parts of the WEEE directive and it does not include other parts of the community legislation or the implementing legislation or other national legislation of Member States)

- Is the EEE explicitly mentioned in the annexes (specific entries)?, *or*
- Can the EEE be included under an indicative entry in the annexes? *Or*
- Is the EEE categorised as luminaires in households or filament bulbs *and*,
(The annexes are a non-exhaustive list of EEE comprised by the categories and several categories contain indicative entries, which covers a wider range of different EEE)
- Does the EEE have a function according to an entry identified in the annexes? (applies to both specific and indicative entries).

References: *Commission*, point 1.3, number 3 and 4,

If yes

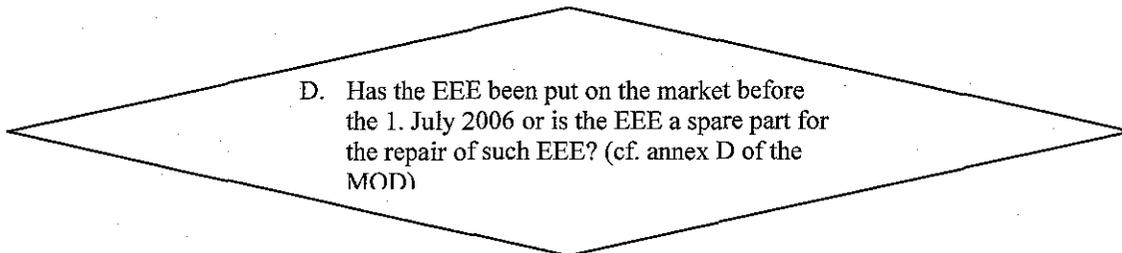
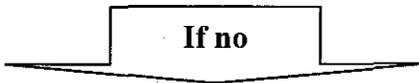
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Cf. article 1(2) of the RoHS-directive.

- Is the EEE regulated by conflicting safety or health related provision in other areas of the community legislation, *or*
- Is the EEE regulated by conflicting provisions in specific community waste legislation (including directive 91/157/EEC)

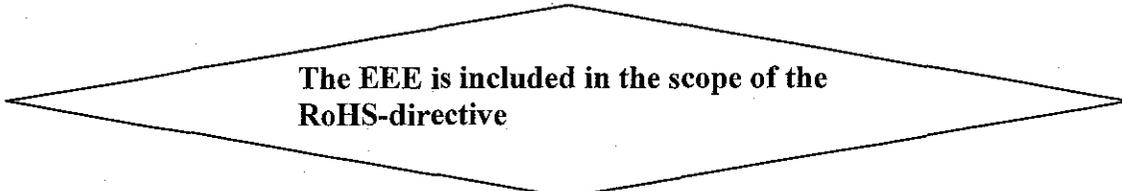
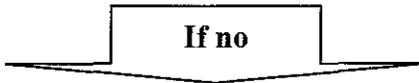
(For both types of legislation it applies, that the reference does not include other types of community legislation or the implementing legislation or other national legislation of Member States)
References: *Commission* point 1.2, no. 4



Cf. article 2(3) and 4(1) of the RoHS-directive.

- Is the EEE put on the market in a Member State before the 1. July 2006, *or*
- Is the EEE a spare part for such a EEE

References: *Commission* point 2.1.



RoHS-scope, Manual of decision

MAIN QUESTION:

A. *Can the product be defined as EEE, cf. art. 3(a)?*

SUBSEQUENT QUESTIONS:

1. Is the equipment dependent on electric currents or electromagnetic fields to work properly? *or*
2. Does the equipment generate, transfer or measure such currents and fields? *and*
3. Is the equipment designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1.500 volts for direct current? (applies for both types of equipment)

The basis for answering the questions is a case by case evaluation of the specific construction, technical facilities of the individual product or type of EEE in order to identify the function and purpose of the specific EEE.

The fundamental provision of the directive is article 4(1) that bans the putting on the market of EEE containing the different substances and preparations identified in the provision. Therefore the information given when an EEE is put on the market can also be taken into consideration together with the construction and the technical facilities when the function and the purpose of a product are identified - Cf. however the term "design" in question 3.

The two first questions are alternatives, which mean that only one of the questions has to be answered with a "yes". The third question is cumulative, which means that this question has to be answered with a "yes" in all circumstances.

Question 1: Is the EEE dependent on electric currents or electromagnetic fields to work properly?

The wording "work properly" indicates, that the equipment is dependent electric currents or electromagnetic fields to maintain its main function and purpose.

The starting point of this evaluation will be to identify the main power source of the EEE. If the main power sources of the EEE are electric currents or electromagnetic fields the answer to this question is yes.

If electrical currents or electromagnetic fields are otherwise of fundamental importance to the main function or purpose of the EEE, this might also be of relevance in this respect. This is the case if the EEE cannot fulfil its main function or purpose without electrical currents or electromagnetic fields.

Question 2: Does the equipment generate, transfer or measure such currents and fields?

This question indicates, that the generation, transfer or measurement of electrical currents and electromagnetic fields, must be the specific function or purpose of the EEE, since there is no qualifying wording such as "work properly".

EU RoHS Competent Bodies Network

When answering this question it is of special importance to bear in mind, that the EEE in question, must also be identified in one of the 8 groups of EEE, that are identified in annex IA of the WEEE-directive, cf. the questions in Annex B of this manual.

Question 3: Is the equipment designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1.500 volts for direct current?

This question has to be answered entirely on the basis of the "design" of the EEE. This must be understood as the construction and technical facilities of the EEE, whereby the information given when the EEE is put on the market is not relevant in this respect.

RoHS-scope, Manual of decision

MAIN QUESTION:

B. Does the product fall within categories 1, 2, 3, 4, 5, 6, 7 or 10 of Annex 1A of the WEEE-directive?

SUBSEQUENT QUESTIONS:

1. Is the product explicitly mentioned in the annexes (specific entries)?, *or*
2. Can the product be included under an indicative entry in the annexes? *Or*
3. Is the product categorised as luminaries in households or filament bulbs *and*,
4. Is the product put on the market with the purpose of having a function according to an entry identified in the annexes? (applies to both specific and indicative entries – if the product is put on the market with multiple purposes the product is included under the scope of the RoHS-directive if one of these purposes is identical with an entry in the annexes)

The basis for answering the questions is a case by case evaluation of the specific construction, technical facilities and the information given at the time when the individual EEE is put on the market in order to identify the function and purpose of the EEE. This means that both information relating to the technical aspects of the EEE as well as the information given when the product is marketed (e.g. labelling, use-instructions and advertisement text) must be taken in to account when answering this question.

Annex 1A of the WEEE-directive is evidently the starting point of defining the RoHS-scope. From the first proposal for a WEEE/RoHS-directive it is clear, that the Commissions intention was to have the same scope for both WEEE- and RoHS-type legislation. The division of the two types of legislation during negotiations in Council and Parliament does not suggest that this intention was changed. It cannot be refused point blank however that the scope of the two directives can diverge in very special cases if the different purpose, structure or legal basis of the RoHS-directive demands this. Annex 1B may serve as an indicative/non exhaustive list of products within the scope of RoHS.

Fixed installations are not directly included in the legal text of the RoHS-directive. Furthermore there is no explicit and legally binding definition in the WEEE-directive of this type of EEE. However on the basis of If a EEE loses its identity, original character, function or purpose by the incorporation in another product or structure so that it can no longer be identified by the 8 categories, it is outside the scope.

The onus is on the producer in the first instance to decide whether or not the product is within the scope of RoHS. The enforcement authority has the right to challenge that decision as part of its enforcement duties.

Question 1: Is the product explicitly mentioned in the annexes (specific entries)?

When answering this question it must be recalled, that the titles of the 8 categories of EEE used in Annexes of the WEEE-directive, are general indicators of the EEE identified in each category. This

EU RoHS Competent Bodies Network

follows from the fact, that Annex 1B is illustrative/indicative, and therefore the titles must be interpreted in an equally dynamic way.

It must also be recalled, that Annexes of the WEEE-directive contains both EEE sold to be used by private persons as well as EEE for professional use. Therefore both products for private use and products for professional use are comprised by the 8 categories in Annexes of the WEEE-directive.

Especially for category 6, it must be noted, that large-scale stationary industrial tools are not part of the category. This type of EEE is not however clearly defined in the RoHS- or WEEE-directives.

Question 2: Can the product be included under an indicative entry in the annexes?

This question has to be answered by taking special account of the purposes of the RoHS-directive, since the answer depends greatly on an individual case by case evaluation. If the interpretation of these provisions makes it doubtful whether or not an EEE is included under one of these entries the EEE must be included, if this will result in the best protection of human health or the environment. In this respect consideration might be given to whether or not the same level of protection is achieved by other parts of the community legislation, cf. annex C of the MOD and consideration might also be given to the impact on the functioning of the WEEE-directive.

This is of particular importance with respect to new types of EEE that is the result of product innovation that have taken place after the adoption of the directive or EEE that have first been introduced on the market after the adaptation of the directive.

Question 3: Is the product categorised as luminaries in households or filament bulbs?

This type of equipment is excluded from the scope of the WEEE-directive, but has been explicitly included in the scope of the RoHS-directive.

The term luminaries must be understood in the broad sense of the term. Therefore it is not confined to certain types of luminaries, e.g. such as luminaries for fluorescent lamps.

Thus luminaires are the structure surrounding a lamp, including the lamp holder or socket with a cord, switch and plug and/or designed to take a light bulb together with other attachments fixing this to the wall, or ceiling or body of a freestanding lamp. Also the lampshade and possible other components of a lamp together constitutes a household luminary.

Question 4: Is the product put on the market with the purpose of having a function according to an entry identified in specific or indicative entries in the annexes?

If the EEE is put on the market with multiple functions and purposes the EEE is included under the scope of the RoHS-directive if one of these functions falls within a category in the annexes.

RoHS-scope, Manual of decision

MAIN QUESTION:

C. Is the product regulated by conflicting safety or health related provisions in other areas of the community legislation or in specific community waste legislation?

SUBSEQUENT QUESTIONS:

1. Is the product regulated by conflicting safety or health related provision in other areas of the community legislation, *or*
2. Is the product regulated by conflicting provisions in specific community waste legislation (including directive 91/157/EEC)

These questions are only related to community legislation, and do not apply to the relationship between the RoHS-directive and national legislation.

These questions have to be answered on the basis of an in-depth analysis of the provisions of the legislation in question.

The starting point of the analysis is that the RoHS-directive applies regardless of other types of legislation unless there is a conflict between the individual provisions of the RoHS-directive and the individual provisions of community legislation concerning safety or health related provision of community legislation or the provisions in specific community waste legislation.

Special attention should be given to possible conflicts due to the exemptions listed in the annex of the RoHS-directive.

Possible conflicts might arise in respect to the following legislation:

Question 1: Directive 2004/50/EC (Rail equipment) and directive 2004/108/EC (EMC)

Question 2: directive 2000/53/EC (ELV), directive 1991/157/EEC (old Batteries directive) and directive 2006/66/EC (New batteries directive)

RoHS-scope, Manual of decision

MAIN QUESTION:

D. Has the EEE been put on the market for the first time before the 1. July 2006 or is the EEE a spare part for the repair of such EEE?

SUBSEQUENT QUESTIONS:

1. Is the EEE put on the market for the first time in market in the European Union before the 1. July 2006? *or*
2. Is the EEE a spare part for such an equipment?

These questions are inter-linked with each other, since the latter question derives from the first question.

The reason for excluding EEE put on the market in the EU before 1. July 2006 is to give industry sufficient time to adjust EEE and the production hereof to the new legislation in the RoHS-directive, therefore "old EEE" put on the market before 1. July must not comply with the bans in the RoHS-directive. Accordingly spare parts for the repair of such "old EEE" are also not included under the scope of the directive.

Question 1: Is the EEE put on the market for the first time in a Member State before the 1. July 2006?

The answer to this question is yes if an EEE is put on the market in the European Union before 1. July 2006. This is primarily due to the fact, that the RoHS-directive is based on article 95 of the Treaty, concerning the establishment of the internal market. The term product refers to every single physical product and not to types/models of products.

According to article 4(1) of the RoHS-directive no Member State is allowed to enforce the directive prior to 1. July 2006. Therefore in this respect the legislator instituted a transitory period allowing industry to prepare and adapt to the provisions of the directive and to put their non-compliant EEE on the market in all Member States of the European Union up to the date of 1. July 2006, from which the directive applies.

It is not clear from the legal text of the directive whether the term "market" refers to a national market or if it refers to the entire internal market of the European Union. Taking into account the legal basis of the directive, and the specific structure of the transitory period provided for in article 4(1) it can be concluded, that the term "market" refers to the European Market.

The conclusion is, that the answer to the question is yes, if the EEE has been put on the market for the first time in one of the Member States of the European Union before 1. July 2006. Such EEE are outside the scope of the directive, and they may be transferred in the supply chain freely for their entire lifetime.

The wording "put on the market" indicates that the EEE must effectively have been placed on the EU-market, making it freely available to market operators in the supply chain on the market.

EU RoHS Competent Bodies Network

For EEE produced in the EU this means that physical transfer of the product, or transferral of the right of ownership (if supported by valid documentation) constitutes that the EEE have been put on the market. For EEE produced outside the EU this means that the EEE has to be transferred physically into the EU, and that the customs procedures have to be concluded (cleared customs).

This includes all types of transfer – with or without payment and it comprises the transfer between all types of physical or legal entities (persons or companies) regardless of their position in the supply chain. Within same company group transfer might be indicated by, e.g. a change in zip-code.

After the transitory period it follows from the above stated, that the RoHS-directive applies to all products when they are put on the market for the first time.

The RoHS-directive can be enforced throughout the entire supply chain, taking into account that national enforcement authorities can only enforce the RoHS-directive within their own territory.

Since Member State enforcement is confined to the territory of the Member State, enforcement authorities should cooperate closely, and should especially to the extent possible inform all other enforcement authorities and the Commission of any steps taken under the RoHS-directive to remedy clear and present risk to the environment or human health in the territory of their Member State.

Question 2: Is the EEE a spare part for such equipment?

This question has to be answered with a yes, if the spare parts are designated to be used for the repair of EEE that have been put on the market for the first time before 1. July 2006. Such non-compliant spare parts can be put on the market freely also after 1. July 2006.

Repair is any activity that is required to restore partly or fully the functionality of the product – compared to the functionality of the product at the time of first time “put on the market”. Spare part is not defined in the RoHS-directive, but as an initial definition a spare part may defined as any component for EEE that is necessary to repair the product according to the definition stated above.

Non compliant parts for the capacity expansion and/or upgrade of EEE put on the market before 1. July 2006 can be used after 1. July 2006. Such parts may however not be used in new products that are put on the market after 1. July 2006.