

WEEE management decree

DECREE OF july 6, 2004

establishing rules for the management of waste electrical and electronic equipment and for the use of certain hazardous substances in electrical and electronic equipment (WEEE Management Decree)

At the proposal of Our Minister of Housing, Spatial Planning and the Environment dated 14 May 2004, no. MJZ2004048257, Central Legal Affairs Department, Legislation Division;

Having regard to Directive no. 2002/95/EC of the European Parliament and the Council of the European Union of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEC 2003, L 37), Directive no. 2002/96/EC of the European Parliament and the Council of the European Union of 27 January 2003 relating to waste electrical and electronic equipment (OJEC 2003, L 37), as amended by Directive no. 2003/108/EC of 8 December 2003 (OJEC 2003, L 345), Section 24, subsection 1, of the Environmentally Hazardous Substances Act and Section 1.1, subsection 3, Section 8.2, subsection 2, Sections 8.40 through 8.42, Section 8.44, Section 8.45, Sections 10.15 through 10.17, Section 10.22, subsection 2, and Section 10.61 of the Environmental Management Act;

Having heard the Council of State (recommendation dated 17 June 2004, no. W08.04.0192/V);

And having considered the further report of Our Minister of Housing, Spatial Planning and the Environment dated 2 July 2004, no. MJZ2004066587, Central Legal Affairs Department, Legislation Division;

HEREBY APPROVE AND DECREE:

Section 1

1. In the context of this Decree, the following definitions shall apply:
 - a. Directive no. 2002/95: Directive no. 2002/95/EC of the European Parliament and the Council of the European Union of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEC 2003, L 37);
 - b. Directive no. 2002/96: Directive no. 2002/96/EC of the European Parliament and the Council of the European Union of 27 January 2003 relating to waste electrical and electronic equipment (OJEC 2003, L 37);

- c. Regulation no. 2037/2000: Regulation no. 2037/2000 of the European Parliament and the Council of the European Union of 29 June 2000 on substances that deplete the ozone layer (OJEC L 244);
 - d. electrical and electronic equipment (EEE): 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, which:
 - (i) falls under one of the categories set out in Annex IA to Directive no. 2002/96; and
 - (ii) is intended for use with a rated alternating voltage not exceeding 1000 volts or a rated direct voltage of 1500 volts;
 - e. producer: any person who, irrespective of the selling technique used:
 - (i) manufactures and sells electrical and electronic equipment under his own brand, or
 - (ii) resells under his own brand electrical and electronic equipment produced or imported and sold by other suppliers, unless the brand of a producer, as defined above under (i), appears on the equipment; or
 - (iii) in the pursuit of his profession or conduct of his business imports or exports electrical and electronic equipment into or out of the Netherlands; with the exception of any party who exclusively provides finance under or pursuant to a finance agreement;
 - f. finance agreement: a loan, lease, hire or deferred sale agreement or arrangement relating to any equipment, irrespective of whether the terms of that agreement or arrangement or the terms of any collateral agreement or arrangement state that a transfer of ownership of that equipment will or may take place;
 - g. CFCs: chlorofluorocarbons as referred to in Article 2 of Regulation no. 2037/2000;
 - h. HCFCs: hydrochlorofluorocarbons as referred to in Article 2 of Regulation no. 2037/2000.
2. The categories of electrical and electronic equipment listed in Annex IA to Directive no. 2006/96 include in any case the products referred to in Annex IB to the same Directive.

Section 2

1. It is not permitted to import into the Netherlands, possess for commercial purposes, place at the disposal of third parties or export out of the Netherlands any electrical or electronic equipment falling under categories 1, 2, 3, 4, 5, 6, 7 or 10 of Annex IA to Directive no. 2002/96, any luminaires intended for household use or any incandescent electric light bulbs if such items contain one or more of the following substances:
 - a. lead;
 - b. mercury;
 - c. cadmium;
 - d. hexavalent chromium;
 - e. polybrominated biphenyls (PBBs); or
 - f. polybrominated diphenyl ethers (PBDEs).
2. Subsection 1 shall not apply to:
 - a. the applications listed in the Annex to Directive no. 2002/95;

- b. the reuse as a product of electrical and electronic equipment put on the market inside the European Community before 1 July 2006 or spare parts for the repair of such equipment;
- c. electrical and electronic equipment put on the market inside the European Community before 1 July 2006; or
- d. electrical and electronic equipment which is not put on the market inside the European Community.

Section 3

Notwithstanding the provisions of Article 4, paragraph 6, and Article 5, paragraph 4, of Regulation no. 2037/2000, the possession for commercial purposes of CFC-containing and HCFC-containing refrigerators and freezers originating from private households or from other sources (insofar as the refrigerators and freezers originating from such other sources are comparable with those from private households in terms of their nature and number) shall be prohibited.

Section 4

1. Within thirteen weeks of the WEEE Management Regulations becoming applicable to him, the producer shall, using an appropriate form to be determined by Our Minister, notify Our Minister as to how he intends to fulfil his obligations under the articles of the WEEE Management Regulations as referred to in the said form, insofar as these articles apply to him.
2. The plans set out in the notification referred to in subsection 1 shall require the approval of Our Minister.
3. The approval referred to in subsection 2 shall apply for a period of no more than five years.
4. Our Minister may make his approval, as referred to in subsection 2, subject to conditions or limitations of his stipulation.
5. Our Minister may modify or withdraw the conditions or limitations stipulated in accordance with subsection 4, either of his own ministerial volition or in response to a request to that end.
6. Not later than thirteen weeks before the end of the period for which ministerial approval of his plans is valid, the producer shall submit a fresh notice as referred to in subsection 1.

Section 5

An amendment to the Annex to Directive no. 2002/95 or to Annex 1A to Directive no. 2002/96 shall for the purposes of this Decree take effect from the day on which this amendment is required to have been implemented, unless a different date is announced by a ministerial decree which is published in the Netherlands Government Gazette.

Section 6

In Section 2, subsection 2, of the Management of End-of-life Vehicles Decree, the words “the provisions of the Management of White and Brown Goods Decree or the Management of Batteries Decree or provisions made pursuant to the said decrees” shall be replaced by the words “in the WEEE Management Decree, the WEEE Management Regulations, or the provisions of or provisions made pursuant to the Management of Batteries Decree”.

Section 7

The Management of White and Brown Goods Decree is hereby repealed.

Section 8

The Annex to the Decree on Environmental Management in the Building and Timber Industries shall be amended as follows:

1. In Part A, the words “white and brown goods: products as defined in Section 1 (a) of the Management of White and Brown Goods Decree” shall be replaced by the words “electrical and electronic equipment (EEE): electrical and electronic equipment as defined in Section 1 of the WEEE Management Decree”.
2. In regulation 1.3.2 (f), the words “white and brown goods” shall be replaced by the words “electrical and electronic equipment”.

Section 9

The Decree on Environmental Management in Craft and Retail Trades shall be amended as follows:

1. In Section 3, subsection 1 (d) (ii), the words “or 20 01 35*” shall be replaced by the words “, 20 01 35* or 21 01 21*”.
2. In Annex 2, Part A, the words “white and brown goods: products as defined in Article 1 (a) of the Management of White and Brown Goods Decree” shall be replaced by the words “electrical and electronic equipment: electrical and electronic equipment as defined in Section 1 of the WEEE Management Decree”.
3. In Annex 2, regulation 1.3.2 (c), the words “white and brown goods” shall be replaced by the words “electrical and electronic equipment”.

Section 10

Annex 2 to the Greenhouse Horticulture Decree shall be amended as follows:

1. In Part A, the words “white and brown goods: products as defined in Article 1 (a) of the Disposal of White and Brown Goods Decree” shall be replaced by the words “electrical and electronic equipment: electrical and electronic equipment as defined in Section 1 of the WEEE Management Decree”.
2. In regulation 1.2.2 (c), the words “white and brown goods” shall be replaced by the words “electrical and electronic equipment”.

Section 11

The Annex to the Decree on Environmental Management in Hotel, Catering, Sports and Recreational Establishments, the Annex to the Decree on Environmental Management in Establishments for Motor Vehicles, the Annex to the Decree on Environmental Management in Buildings for Residential and Temporary Accommodation, Annex 1 to the Decree on Environmental Management in the Textile Cleaning Industry and Annex 2 to the Decree on Environmental Management at Facilities and Installations shall be amended as follows:

1. In Part A, the words “white and brown goods: products as defined in Article 1 (a) of the Management of White and Brown Goods Decree” shall be replaced by the words “electrical and electronic equipment: electrical and electronic equipment as defined in Section 1 of the WEEE Management Decree”.
2. In regulation 1.3.2 (c), the words “white and brown goods” shall be replaced by the words “electrical and electronic equipment”.

Section 12

In Annex 1 to the Minor Chemical Waste (KCA) Logo Decree, item 2 shall expire and items 3 and 4 shall be renumbered to items 2 and 3.

Section 13

The 1998 Mercury-Containing Products Decree (Environmentally Hazardous Substances Act) shall be amended as follows:

1. A subsection shall be added to Section 1.2, reading: “5. Furthermore, this decree shall not apply to mercury-containing products governed by the rules laid down in the WEEE Management Decree.”
2. In Section 2.4, item l shall expire and items m through p shall be relettered to items l through o.

Section 14

The Decree on Environmental Management in the Storage and Transport Industries shall be amended as follows:

1. In Section 3, subsection 1 (d) (ii), the words “or 20 01 35*” shall be replaced by the words “, 20 01 35* or 21 01 21*”.
2. In Part A of the Annex, the words “white and brown goods: products as defined in Article 1 (a) of the Management of White and Brown Goods Decree” shall be replaced by the words “electrical and electronic equipment: electrical and electronic equipment as defined in Section 1 of the WEEE Management Decree”.
3. In regulation 1.3.2 (c) of the Annex, the words “white and brown goods” shall be replaced by the words “electrical and electronic equipment”.

Section 15

The wording of Section 1, subsection 1, clause 11, of the Decree on Waste Tips and Waste Tipping Prohibitions shall be changed to “11. electrical and electronic equipment;”.

Section 16

The 1999 Cadmium Decree (Environmentally Hazardous Substances Act) shall be amended as follows:

1. The title of paragraph 1 shall be changed to “§ 1. Definitions and scope”.
2. In Article 1.1, section 1 (e), the comma at the end of item 4 shall be replaced by the words “, or”. The words “, or” at the end of item 5 shall be replaced by a semicolon and item 6 shall expire.
3. After Section 1.1, a further section shall be added, reading:

“Section 1.1a

This decree shall not apply to products governed by the rules laid down in the WEEE Management Decree.”

Section 17

In category 28.8 of Annex I to the Establishments and Permits (Environmental Management) Decree, the words “only insofar as this waste material has been offered by or collected from private households” shall be replaced by the words “insofar as this waste material has been offered by or collected from private households or is similar to waste material from private households in terms of its nature or quantity”.

Section 18

This Decree shall come into force on 13 August 2004, with the exception of:

- a. Section 12, which shall come into force on 13 August 2005; and
- b. Sections 2, 13 and 16, which shall come into force on 1 July 2006.

Section 19

This decree shall be referred to as the WEEE Management Decree.

We order and command that this Decree and the accompanying explanatory memorandum be published in the Bulletin of Acts, Orders and Decrees.

The Hague, July 6 2004

Beatrix

The State Secretary for Housing, Spatial
Planning and the Environment,
P.L.B.A. van Geel

Published July 15, 2004

Explanatory memorandum

I. General

1. Introduction

This Decree lays down a number of rules regarding electrical and electronic equipment. The Decree primarily implements Directive no. 2002/95/EC of the European Parliament and the Council of the European Union of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEC L 2003, 37) (referred to below simply as “Directive no. 2002/95”). Directive no. 2002/95 regulates the use in electrical and electronic equipment of certain hazardous substances, such as lead, mercury and cadmium. The rules contained in the Directive are designed to protect public health and ensure that equipment is dealt with in an environmentally responsible manner. The legal basis for the Directive is Article 95 of the EC Treaty.

In addition, this Decree prohibits trading in CFC-containing and HCFC-containing refrigerators and freezers and requires producers of electrical and electronic equipment to submit information to the authorities regarding their fulfilment of the obligations to which they are subject pursuant to the WEEE Management Regulations.

This Decree is closely linked to the WEEE Management Regulations, which are based on Section 21.6, subsection 6, of the Environmental Management Act (referred to below by the abbreviation EMA). The WEEE Management Regulations implement Directive no. 2002/96/EC of the European Parliament and the Council of the European Union of 27 January 2003 concerning waste electrical and electronic equipment (OJEC L 2003, 37), as amended by Directive no. 2003/108/EC of 8 December 2003 (OJEC L 345). The former Directive is referred to below as “Directive no. 2002/96”. The WEEE Management Regulations deal with the management of waste electrical and electronic equipment, applying the principle of producer responsibility. Among other things, this WEEE Management Decree and the WEEE Management Regulations supersede the provisions of the Management of White and Brown Goods Decree.

2. Scope and content of the Decree

The definitions contained in Section 1 closely follow those used in the above-mentioned European directives. Section 2 regulates the use of certain hazardous substances in electrical and electronic equipment. Section 3 reinforces the prohibition on trade in CFC-containing and HCFC-containing products and equipment included in EC Regulation no. 2037/2000 of the European Parliament and the Council of the European Union of 29 June 2000 on substances that deplete the ozone layer (OJEC L 244) (referred to below simply as “Regulation no. 2037/2000”). The reinforcement provided by the Decree takes the form of a total prohibition on trade in CFC-containing and HCFC-containing refrigerators and freezers. In this respect, the Decree maintains the prohibition previously set out in the Management of White and Brown Goods Decree. Section 4 requires producers to provide the authorities with

certain information about relevant activities. A producer with obligations under the WEEE Management Regulations is required to submit a Plan of Action to the Minister of Housing, Spatial Planning and the Environment, setting out how the producer intends to discharge his obligations. This obligation to provide information is contained in various decrees based on the Environmental Management Act, including the decree superseded by this decree, namely the Management of White and Brown Goods Decree. In this instance, the obligation to provide information constitutes the partial implementation of (Articles 12 and 16 of) Directive no. 2002/96, which requires member states to make appropriate provisions for the submission of information and to ensure that inspection and checking systems are in place to ensure enforcement of the Directive's provisions. The provisions of Section 21.6, subsection 6, of the Environmental Management Act prevent the direct inclusion of such an obligation in the WEEE Management Regulations.

3. Workability and enforcement

This Decree is based on the Environmental Management Act and the Environmentally Hazardous Substances Act (referred to below by the abbreviation EHSA). Section 10.17 of the EMA allows for the introduction of regulations regarding the collection, recovery or disposal of specified substances, preparations or other products for environmental protection purposes.

Section 24 of the EHSA allows for the introduction of regulations on the importation into the Netherlands, possession, supply, transportation, exportation or disposal of certain substances or preparations, if there are reasonable grounds for suspecting that activities involving these substances or preparations can have negative effects on public health or on the environment. Subsection 2 (f) of the EHSA states that a prohibition may be imposed on such activities involving products that contain these specified substances or preparations.

Sections 2 and 3 of the WEEE Management Decree are based on Section 24 of the EHSA. Section 4 of the Decree is based on Section 10.17 of the EMA. Scope for the enforcement of these sections exists under both administrative and criminal law. The powers provided for in Part 18 of the EMA may be used for administrative enforcement (involving, for example, administrative orders or the imposition of penalties). Under Section 64, subsection 1, of the EHSA, sections 18.3 through 18.6 of the EMA also apply to the enforcement of the provisions of or provisions made pursuant to the EHSA.

Failure to comply with the provisions of sections 2 and 3 of this Decree, which are based on Section 24 of the EHSA, constitutes an economic offence in the sense of Section 1a, clause 1, of the Economic Offences Act. Failure to comply with the provisions of Section 4 of this Decree, which is based on Section 10.17 of the EMA, constitutes an economic offence in the sense of Section 1a, clause 2, of the Economic Offences Act.

The Minister of Housing, Spatial Planning and the Environment (VROM) is responsible for monitoring compliance with this Decree and for ensuring its enforcement under administrative law. Day-to-day discharge of the minister's

responsibilities in this regard is delegated to the VROM Inspectorate. Enforcement under criminal law is the duty of the Public Prosecutor's Office, to which the VROM Inspectorate may refer cases as appropriate. Monitoring and enforcement will focus primarily on Sections 2, 3 and 4 of this Decree.

In the enforcement of Section 2, attention may be paid to any business which possesses electrical and electronic equipment or supplies such equipment to a third party (this includes putting such equipment on the market). Monitoring and enforcement activities will not focus exclusively on the producers of such equipment, but will also extend to, for example, retailers selling such equipment. With regard to enforcement of the prohibition on trade in CFC-containing and HCFC-containing refrigerators and freezers (Section 3), the intention is to tie in with the enforcement of Regulation no. 2037/2000 and the 2003 Ozone-Depleting Substances Decree (EHSA). Such an approach would seem sensible, since Section 3 of the WEEE Management Decree reinforces the trading prohibition contained in Regulation no. 2037/2000. For the purpose of securing compliance with Section 4 (i.e. the obligation to supply information), the main emphasis will be on the producers of electrical and electronic equipment. Producers may join a collective executive organisation. If the information supplied by this executive organisation is approved, the affiliated producers will be regarded as having fulfilled their obligation under Section 4. Experience has shown that the enforcement of the obligation to provide information does not require the deployment of undue capacity, since an enterprise that fails to meet its obligations is liable to be reported to the VROM Inspectorate by its competitors, enabling the Inspectorate to take appropriate measures.

The obligation to provide information is an important tool because it makes the Decree workable and readily enforceable. This was the result of a workability analysis undertaken in conjunction with the Law Enforcement Expertise Centre at the Ministry of Justice in September 2003. The analysis looked in particular at the possibility of dispensing with the requirement that an action plan be submitted to the Minister of VROM for approval, in favour of a less strict regime that would involve less administrative burden. The alternative system would be based upon the registration of name and address details only, without an assessment procedure. The implications for implementation and enforcement were discussed with a number of producers and retailers and with the VROM Inspectorate. The general conclusion was that a system based on registration only would result in significantly more 'free riders' (i.e. producers who do not meet their obligations) than a system based on full information provision, which would lead to enforcement problems. Consequently, contrary to what was indicated in a letter to the Lower House concerning proposed regulatory amendments (Proceedings of the Lower House, 2003/2004, 29 200 XI, no. 7), the WEEE Management Decree contains an obligation to provide information, rather than a simple registration requirement.

4. Administrative cost for businesses

Section 4 (obligation to provide information) makes it obligatory for businesses to submit details of their planned activities to the authorities. It is estimated that the administrative cost of compliance with this requirement will total approximately EUR 405 (with a maximum of EUR 480) per business, which equates to

approximately EUR 81,000 (with a maximum of EUR 96,000) for the sector as a whole. Given that the information provision requirement is not new, but was already included in the Management of White and Brown Goods Decree, the additional cost (compared with the cost burden existing immediately prior to the new decree coming into force) is estimated at EUR 162 (with a maximum of EUR 87) per business and EUR 13,000 (with a maximum of EUR 28,000) for the sector as a whole. The method by which these figures have been calculated and the assumptions upon which they are based are included in the WEEE Management Regulations, since the information provision requirement is closely related to the other obligations set out in those Regulations.

5. International considerations

Section 3 of this Decree reinforces Regulation no. 2037/2000, which prohibits the production and marketing of CFC-containing or HCFC-containing refrigerators and freezers. Regulation no. 2037/2000 also prohibits trading in such equipment, with the exception of CFC-containing appliances produced before 30 September 2000 and HCFC-containing appliances produced before 31 December 1995.

Because Regulation no. 2037/2000 is based on Article 175 of the EC Treaty, Article 176 of that same Treaty makes it possible to take further protective measures, provided these are consistent with the EC Treaty. The prohibition on trading contained in Article 3 of this Decree is such a further protective measure. This national policy will result in CFC-containing and HCFC-containing refrigerators and freezers which were produced before 30 September 2000 or 31 December 1995, respectively, being phased out sooner than required by the EU. This will contribute to the realisation of the Regulation's objective of reducing the presence of CFCs and HCFCs in such equipment. A trading prohibition has been in force in the Netherlands since 1 January 1999 (Section 3 of the former Management of White and Brown Goods Decree), so the prohibition contained in the new Decree represents a continuation of national policy.

This national policy is consistent with the EU Treaty. If a trade restriction in the sense of Articles 28 and 29 of the EU Treaty is created, this is justified on the basis of Article 30 of the Treaty, because CFCs and HCFCs are substances that are hazardous to the health of humans, animals and plants. Abolishing the existing prohibition on trading in CFC-containing and HCFC-containing equipment would constitute a step backwards for the level of environmental protection already achieved in the Netherlands. The prohibition applies equally to importation, exportation and domestic trade and was previously included in Section 3 of the Management of White and Brown Goods Decree (notification no. 97/0408/NL). On 13 October 1997, the Management of White and Brown Goods Decree was submitted to the Secretariat of the World Trade Organisation in order to meet the TBT requirements (TBT notification no. 97.0674).

To give effect to Article 176 of the EC Treaty, Section 3 will be brought to the attention of the European Commission.

6. Responses to the draft decree

In line with Section 21.6, subsection 4, of the Environmental Management Act and Section 61, subsection 1, of the Environmentally Hazardous Substances Act, the draft decree was submitted to both chambers of the Dutch Parliament and published in the Netherlands Government Gazette of February 2004 (no. 24), so that all who wished to do so could comment upon it.

A response to the draft decree was received from the ICT Environmental Foundation (*Stichting ICT Milieu*). In this response, the Foundation suggests introducing an exception for the reuse of new appliances in which existing parts are used that contain one or more of the substances listed in Section 2, subsection 1, of this Decree. The parts are derived from equipment put on the market before 1 July 2006. The authorities recognise the problem, but it can only be solved by amending the Directive. Attention has been requested for this problem at the European level.

The ICT Environmental Foundation also fears that it will be more difficult to implement the WEEE Management Regulations because the obligation to provide information is included in the Decree and not in the Regulations. The provisions of Section 21.6, subsection 6, of the Environmental Management Act prevent the inclusion of such an obligation in the WEEE Management Regulations. However, there will be few implementation problems because the relevant forms will be included in the WEEE Management Regulations. In addition, the explanatory material for the regulations and the information campaign will point out that producers are under an obligation to provide information. This will maximise awareness among producers that they must submit certain information.

On 11 March 2004, the standing parliamentary committee on housing, spatial planning and the environment of the Dutch Lower House posed a number of factual questions concerning the draft decree. These questions were answered in a letter dated 13 April 2004, reference no. SAS/2004033084. The questions and answers have been published in the Proceedings of the Lower House (Proceedings of the Lower House II 2003/04, 29 200 XI, no. 95).

II. Notes on the individual sections of the Decree

Section 1

Subsection 1

Definitions (d) to (f) are derived from Directive no. 2002/95 and Directive no. 2002/96. These definitions are also included in the WEEE Management Regulations.

Definition (d) specifies what constitutes electrical and electronic equipment (EEE). This is equipment that falls under one of the categories of Annex IA to Directive no. 2002/96. These categories are broken down into products, which are listed in Annex IB to Directive no. 2002/96. The latter list of products is not exhaustive,

however, and so does not decide the question of whether a given product is ‘equipment’ in the sense of this Decree; that question is decided by whether a product falls under one of the categories listed in Annex IA to Directive no. 2002/96. If this is the case and the product also meets the other aspects of the definition, then it falls under the category of ‘electrical and electronic equipment’ in the sense of this Decree. The phrase ‘in order to work properly’ in definition (d) implies that, to be classed as electrical and electronic equipment, an appliance must require electrical energy to perform its primary functions. A refrigerator, for example, cannot serve its intended purpose (keeping things cool) without electricity; thus electricity is necessary for a refrigerator to work properly. By contrast, a cuddly toy that emits electronically generated sounds when touched is *not* dependent on electricity to perform its primary function. Its primary function is ‘being cuddly’, for which battery power is not required, and making sounds is a subsidiary function.

Definition (e) prescribes who constitutes a producer. It is a broad definition. For example, one of the things it indicates is that the sales method is irrelevant. Hence, equipment sales made via the Internet (electronic selling) and other distance selling techniques referred to in Directive no. 97/7/EC of the European Parliament and the European Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC L 144) are also covered by this Decree. Any party that imports equipment is also considered to be a producer. In practice it has emerged that it is not always clear who is the importer of the equipment. It is possible to determine whether an item of equipment has been imported from the VAT details on the invoice. If an entrepreneur has an invoice stating that foreign VAT has been raised, or that the zero rate of VAT has been applied, then the equipment has been ‘imported’ and the enterprise in question is considered to be the producer in the sense of this Decree. Parallel importers are also covered by this definition and are therefore producers in the sense of this Decree. As such, they have the same obligations as other producers. For that matter, any party who *exports* equipment is also a producer in the sense of this Decree. When equipment is sold from the Netherlands (e.g. via the Internet) and delivered to another country (whether a member state of the European Union or not), the producer (i.e. the party exporting the equipment) has obligations in the Netherlands under this Decree. Any party that exclusively provides finance under a finance agreement is not considered to be a producer, unless it also performs the other activities referred to in Section 1, definition (e), items (i) through (iii), in which case the exception does not apply and the party *is* considered to be a producer.

Subsection 2

In view of the provisions of subsection 1, definition (d), item 1, subsection 2 indicates which products by definition fall under the categories listed in Annex IA to Directive no. 2002/96. These are the same products listed in Annex IB to Directive no. 2002/96. The list is not exhaustive.

Section 2

From 1 July 2006, the use of certain hazardous substances in electrical and electronic equipment will no longer be permitted. As from that date, such equipment may not

be imported into the Netherlands, held for commercial purposes, supplied to third parties or exported out of the Netherlands. The same applies to incandescent electric light bulbs and luminaires intended for household use. The phrasing of these prohibited actions is in line with Section 24, subsection 1, of the Environmentally Hazardous Substances Act. The prohibition of these actions implements the provisions of Article 4, paragraph 1, of Directive no. 2002/95. These provisions determine that from 1 July 2006 onwards, no new electrical and electronic equipment may be put on the market inside the European Union if such equipment contains one or more of the aforementioned substances. In implementing this directive, it was decided to extend the prohibition from the first action which could be considered as 'putting a product on the market' (this term is defined below) to any further actions (including subsequently placing products at the disposal of third parties). This prevents products from being illegally introduced to the common market and traded on without any resulting penalties.

Subsection 2 of Section 2 contains a number of exceptions. The first exception deals with several specific applications listed in the Annex to Directive no. 2002/95/EC. Item (b) contains an exception for the reuse as a product of appliances that were put on the market inside the European Community before 1 July 2006. This concerns the reuse of waste electrical and electronic equipment. In view of the advantages offered by reusing products, the spare parts required to repair such products are also excluded from the prohibition referred to in subsection 1. In line with Directive no. 2002/95/EC, item (c) states that the prohibition referred to in subsection 1 does not apply to products introduced to the common market prior to 1 July 2006. Among other things, this provision makes it possible to phase out remaining trading stock. Finally, item (d) makes an exception for products not put on the market in the European Community. The possession of products for the purpose of exporting them outside the European Community or placing them at the disposal of third parties (for instance during transfer or transit) is therefore still permitted.

In the context of this Decree, the meaning of the phrase 'put on the market' is the same as the meaning of the phrase 'place on the market', as defined in the *Guide to the Implementation of Directives Based on the New Approach and Global Approach*¹. Hence, putting a product on the market is the initial action of making a product available for the first time on the Community market, with a view to distribution or use in the Community. Making a product available can be either for payment or free of charge. A product is made available for the first time when, following production, possession is transferred with a view to the product's further distribution or use. Putting on the market is a process that does not involve a type of product but individual products, whether manufactured as separate units or in series.

As previously stated, the prohibition comes into force on 1 July 2006. The existing regulations regarding mercury and cadmium as contained in the 1998 Mercury-Containing Products Decree (EHSA) and the 1999 Cadmium Decree (EHSA) will remain in force until that date.

Section 3

This section prohibits trade in refrigerators and freezers containing CFCs or HCFCs. The production and marketing of these appliances is already prohibited under Regulation no. 2037/2000. This Regulation also contains a limited ban on trade in refrigerators and freezers containing CFCs or HCFCs. Appliances containing CFCs produced before 30 September 2000 and appliances containing HCFCs produced before 31 December 1995 are not covered by this ban, however. Because a total ban on such trade has been in force in the Netherlands since 1 January 1999 under the Management of White and Brown Goods Decree, it was decided to leave the ban in place. As in the Management of White and Brown Goods Decree, the trading prohibition only applies to equipment from private households and equipment from sources other than private households (e.g. from commercial, industrial, institutional or other sources) which is similar to that from private households in terms of its nature and quantity. Please refer to the general section of this explanatory memorandum for further information on international legal aspects.

Section 4

This Section requires producers to inform the authorities about how they intend to fulfil their obligations under the WEEE Management Regulations. A special form will be drawn up for the submission of the information, which must be provided in the form of an action plan. The action plan will be assessed by the Minister for Housing, Spatial Planning and the Environment, who will focus specifically on whether a system has actually been set up that may be expected to satisfy the regulatory requirements. Since what the minister assesses is a forward looking statement of the producer's intentions, it follows that approval of an action plan does not exclude the possibility that enforcement measures will subsequently be required to ensure compliance with the regulations in practice.

Amendments to other decrees

Articles 6 through 17 ensure that various other decrees are amended to reflect the new regulations on the management of electrical and electronic equipment. The decrees to be amended are **listed alphabetically**. For purposes of regulatory economy, changes which are implemented similarly in several decrees have been combined. Several changes are explained below.

Section 7

Because the Management of White and Brown Goods Decree has been repealed, the Regulations on the Designation of White and Brown Goods and the 2000 Regulations on Requirements for Treatment of CFC-Containing and HCFC-Containing Refrigerators and Freezers shall also expire.

Section 9 and Section 14

EURAL code 21 01 21*, which deals with fluorescent tubes and other mercury-containing waste, will be incorporated into Section 3, subsection 1 (d), item 2, of the Decree on Environmental Management in Craft and Retail Trades and the Decree on Environmental Management in the Storage and Transport Industries. As a result, no

more than 35 cubic metres of fluorescent tubes may be stored in these so-called '8.40 establishments' (a reference to Section 8.40 of the Environmental Management Act). This storage capacity is necessary to fulfil the relevant obligations laid down in this Decree. Without the inclusion of EURAL code 21 01 21*, these establishments would be obliged to produce a licence.

Section 12

This section contains an amendment to the Minor Chemical Waste (KCA) Logo Decree. This Decree will no longer include a requirement to label gas discharge lamps or their packaging with a minor chemical waste logo. Instead, gas discharge lamps will be labelled with the symbol referred to in Annex III of the said Decree. This new requirement implements Article 10, paragraph 3, of Directive no. 2002/96 and has been included in the WEEE Management Regulations. The Directive states that this labelling requirement applies to all electrical and electronic equipment put on the market from 13 August 2005 onwards.

Section 13 and Section 16

Sections 13 and 16 state that a section will be added to the 1998 Mercury-Containing Products Decree (EHSA) and the 1999 Cadmium Decree (EHSA), stating that these Decrees are not applicable to products covered by the WEEE Management Decree. This has been done in order to avoid a situation where such products would be subject to two regulatory regimes. Section 2.4, subsection 1, of the 1998 Mercury-Containing Products Decree (EHSA), which deals with gas discharge lamps, and Section 1.1, subsection 1 (e), item 6, of the 1999 Cadmium Decree (EHSA), which deals with fluorescent tube lamps, have become superfluous because the new management regime for electrical and electronic equipment also contains regulations for such appliances. Consequently, these sections have been removed. Although the above-mentioned decrees also make reference to other types of equipment, such equipment may in certain situations fall outside the scope of the term 'electrical and electronic equipment' in the sense of this Decree. This is the case, for instance, if the equipment is intended to operate on a voltage which differs from the voltage referred to in the definition.

Section 17

In the WEEE Management Regulations, waste electrical and electronic equipment from private households is defined as waste equipment originating from private households or from commercial, industrial, institutional or other sources, provided that the latter type of waste is comparable with waste from private households in terms of its nature and quantity. Because the regulations also apply to the latter category of (industrial) waste, competent authority over an establishment would pass from the municipal to the provincial authorities in a number of cases. This would be undesirable, because there is no reason to draw a distinction based on competent authority given the fact that both categories of waste in the definition are comparable in terms of their nature and quantity. Category 28.8 of the Establishments and Permits (Environmental Management) Decree has therefore been adjusted accordingly. In conclusion, the municipal executive remains the competent authority

with regard to establishments for storing waste, provided that the waste is comparable to waste from private households in terms of its nature and quantity and provided that the establishment is required to take in waste under a general administrative order pursuant to Section 10.17 or Section 15.32, subsections 1 and 2, of the Environmental Management Act.

Perhaps needless to say, category 28.8 of the Establishments and Permits (Environmental Management) Decree only determines the competent authority. This amendment to the said Decree does not mean, for instance, that municipal waste-processing facilities are *obligated* to take in industrial waste which is comparable to waste from private households in terms of its nature and quantity. Whether such an obligation exists, is determined by the exact content and scope of the relevant general administrative order (pursuant to Section 10.17 or Section 15.32, subsections 1 and 2, of the Environmental Management Act), or the exact content and scope of the relevant ministerial regulation (pursuant to Section 21.6, subsection 6, of the Environmental Management Act).

Section 18

This Decree comes into force on 13 August 2004, the date when the provisions of Directive no. 2002/95 and Directive no. 2002/96 must be implemented. A number of sections will come into force on another date. These exceptions are listed under item a and b of Section 18.

Item a

The requirement to label electrical and electronic equipment with the symbol referred to in Annex III to Directive no. 2006/96 comes into force on 13 August 2005. Section 12 states that the Minor Chemical Waste (KCA) Logo Decree will be adjusted accordingly. This change will also take effect on 13 August 2005.

Item b

In accordance with the provisions of Article 4, subsection 1, of Directive no. 2002/95, the provision in item b of Section 18 of this Decree states that the prohibition referred to in Section 2 will come into force on 1 July 2006. Accordingly, the provisions to amend the 1998 Mercury-Containing Products Decree (EHSA) and the 1999 Cadmium Decree (EHSA) accordingly will also come into force on 1 July 2006.

Transposition table

The WEEE Management Decree is referred to by the abbreviation ‘WEEE Dec’. The WEEE Management Regulations are referred to by the abbreviation ‘WEEE Regs’.

<u>Directive no. 2002/95</u>	<u>Dutch laws and regulations</u>
Article 1	Does not require implementation
Article 2, paragraph 1	Section 2, subsection 1, WEEE Dec
Article 2, paragraph 2	Does not require implementation

Article 2, paragraph 3	Section 2, subsection 2 (b), WEEE Dec
Article 3 (a)	Section 1, subsection 1 (d), WEEE Dec
Article 3 (b)	Section 1, subsection 1 (e), WEEE Dec
Article 4, paragraph 1	Section 2, subsection 1 and 2, and Section 13 and 16, WEEE Dec
Article 4, paragraph 2	Section 2, subsection 2 (a), and Section 5, WEEE Dec
Article 4, paragraph 3	Does not require implementation
Article 5	Does not require implementation
Article 6	Does not require implementation
Article 7	Does not require implementation
Article 8	Inherent in Section 64.1 of the EHSA, Part 18 of the EMA and Section 1a, items 1 and 2 of the Economic Offences Act
Article 9	Does not require implementation
Annex	Dynamic reference based on Section 2, subsection 2, item a, WEEE Dec
<u>Directive no. 2002/96</u>	<u>Dutch laws and regulations</u>
Article 1	Does not require implementation
Article 2, paragraph 1	Section 2 (a) and Section 1, subsection 1, item b, WEEE Regs
Article 2, paragraph 2	Does not require implementation
Article 2, paragraph 3	Section 2 (b), WEEE Regs
Article 3 (a)	Section 1, subsection 1 (b), WEEE Regs
Article 3 (b)	Section 1, subsection 1 (c), WEEE Regs
Article 3 (c)	Section 1, subsection 1 (d), WEEE Regs
Article 3 (d)	Section 1, subsection 1 (e), WEEE Regs
Article 3 (e)	Section 1, subsection 1 (f) and (g), WEEE Regs
Article 3 (f)	Section 1.1, subsection 1, EMA
Article 3 (g)	Section 1.1, subsection 1, EMA
Article 3 (h)	Section 1, subsection 1 (h), WEEE Regs
Article 3 (i)	Section 1, subsection 1 (j), WEEE Regs
Article 3 (j)	Section 1, subsection 1 (k), WEEE Regs
Article 3 (k)	Section 1, subsection 1 (l), WEEE Regs
Article 3 (l)	Section 1, subsection 1 (m), WEEE Regs
Article 3 (m)	Section 1, subsection 1 (i), WEEE Regs
Article 4	Financial support on project basis
Article 5, paragraph 1	Section 3, subsection 1, and Section 7 of the WEEE Regs, as well as information and promotion initiatives (e.g. SAM)
Article 5, paragraph 2 (a)	Section 3, subsection 2, WEEE Regs
Article 5, paragraph 2 (b)	Section 4 (option to deviate not exercised)
Article 5, paragraph 2 (c)	Section 6, WEEE Regs
Article 5, paragraph 2 (d) (1)	Section 5, WEEE Regs, and Section 10.21, EMA
Article 5, paragraph 2 (d) (1)	No use made of this option

Article 5, paragraph 3	Section 7, WEEE Regs
Article 5, paragraph 4	Section 8, WEEE Regs, and Sections 8.1, 10.37 and 10.1 EMA
Article 5, paragraph 5	Does not require implementation
Article 6, paragraph 1 (1)	Section 8 and Section 9, subsection 1, WEEE Regs
Article 6, paragraph 1 (2)	Does not require implementation
Article 6, paragraph 1 (3)	No use made of this option
Article 6, paragraph 2 (1)	Section 8.1 EMA and Annex I, category 28 of the Establishments and Permits (Environmental Management) Decree
Article 6, paragraph 2 (2)	No use made of this option
Article 6, paragraph 3	Section 9, subsection 2, WEEE Regs
Article 6, paragraph 4	Section 8.1, EMA and the Establishments and Permits (Environmental Management) Decree
Article 6, paragraph 5 (1)	National laws and regulations not counteractive Waste Shipment Directive is directly effective
Article 6, paragraph 5 (2)	Section 10, subsection 3, WEEE Regs
Article 6, paragraph 6	To be realised by CCM Foundation (set up by VROM)
Article 7, paragraph 1, first sentence	Inherent in decree as a whole
Article 7, paragraph 1, second sentence	Section 10.4 and 10.5 EMA and National Waste Management Plan
Article 7, paragraph 1, third sentence	Section 10, subsection 2, WEEE Regs
Article 7, paragraph 2	Article 10, paragraph 1, WEEE Regs
Article 7, paragraph 3 (1)	Sections 8.14 and 10.37, EMA
Article 7, paragraph 3 (2)	Does not require implementation
Article 7, paragraph 4	Does not require implementation
Article 7, paragraph 5	By application of financial resources
Article 8, paragraph 1	Section 11, subsections 1, 2 and 3, WEEE Regs
Article 8, paragraph 2 (1)	Section 11, subsection 1, WEEE Regs
Article 8, paragraph 2 (2)	Section 11, subsections 4 and 5, WEEE Regs
Article 8, paragraph 2 (3)	Section 11, subsection 6, WEEE Regs
Article 8, paragraph 3 (1)	Section 11, subsection 2, WEEE Regs
Article 8, paragraph 3 (2)	Section 11, subsection 7, WEEE Regs
Article 8, paragraph 4	Inherent in definition of the term 'producer' (Section 1 (i), WEEE Regs), which covers remote selling
Article 9, paragraph 1 (1)	Section 12, subsection 1, WEEE Regs
Article 9, paragraph 1 (2)	Section 12, subsection 2, WEEE Regs
Article 9, paragraph 1 (3)	Section 12, subsection 2 (alternative option exercised)
Article 9, paragraph 1 (4)	Section 12, subsection 2, WEEE Regs
Article 9, paragraph 2	Section 12, subsection 3, WEEE Regs

Article 10, paragraph 1 (a)	Incentive programmes for separate return by consumers (STAP and SAM), information programmes by ministry of VROM, executed by Milieu Centraal, AOO and VROM website and as a consequence of the EMA system: municipal authorities collect waste separately and must inform the public accordingly
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The State Secretary for Housing, Spatial
Planning and the Environment,