

THE REVIEW OF DIRECTIVE 2002/95/EC
(the "RoHS" Directive)
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN
ELECTRICAL AND ELECTRONIC EQUIPMENT
INVITATION FOR COMMENTS ON TOPICS AND FOR INFORMATION SUPPLY
March – May 2007

SUMMARY OF COMMENTS AND INFORMATION RECEIVED

In total, contributions from 49 different sources were received; these sources include individuals (engineers, academics, SME owners); companies and industry associations in the EEE (electrical and electronic) sector (the overwhelming majority of the responses); NGOs; authorities from member state and third countries; and standardisation and certification organisations.

In general stakeholders commented on the topics suggested in the consultation document and some, but not fundamentally new, additional topics were proposed. This points to a rather comprehensive coverage of the possible topics for review in this document; the short summary of comments given below is therefore based on its structure.

PRODUCT GROUPS TO BE INCLUDED [ARTICLE 6 OF ROHS]

Several recommendations of the study commissioned by the Commission services (finalised in 2006) on the inclusion of medical devices and monitoring and control instruments (categories 8&9) in the scope of the Directive were broadly supported. While almost all stakeholders acknowledge the need for including these products in the scope, industry insists that adequate transition periods and exemptions for some applications should be granted (for some categories of equipment inclusion should not be envisaged before 2018, exemption for lead in solders for some types medical equipment and "industrial" monitoring and control instruments is requested).

Further to the inclusion of the two product categories on the basis of Article 6, there were more general comments on the scope. In particular industry stresses the need for clarification of the scope in general, since for several products it is unclear whether they fall into the scope of the RoHS Directive or not ("grey area products", "finished products", concepts of "large scale industrial tools" and "fixed installations"). There were several comments about diverging interpretations by various Member States as to what each product category of the scope covers and on whether specific products fall within the scope or not, thus creating confusion and problems in the internal market.

There were also suggestions for an "inclusive" approach regarding the scope, i.e. that it should cover all electrical and electronic equipment and components, thus avoiding confusion and enhancing the environmental performance of the Directive.

SUBSTANCES COVERED [ARTICLE 6 OF ROHS]

While many industry stakeholders do not see the need for extending the ban to other substances in EEE and insist on carrying out the proper risk and economic assessments before envisaging any such move, the NGOs point to the potential negative effects of the use of hazardous substances in EEE currently not regulated by the RoHS Directive on the protection for human health and the environment throughout the life cycle of these products. In any case most stakeholders agree that the requirements and developments in the EU chemicals' legislation (REACH) should be carefully considered and any overlap with the RoHS directive should be avoided.

In the context of this consultation several scientific reports were provided on a number of related topics such as the presence of other hazardous substances and their quantities in EEE, progress of ongoing risk assessments, substitution of soldering materials in EEE and impacts of the presence of hazardous substances in EEE in various phases of the life cycle, in particular end of life management.

This topic, together with enforcement and to a lesser extent the mechanism for exemptions, received the greatest number of comments.

SCOPE OF THE DIRECTIVE

Most of the stakeholders who have expressed themselves on this point (mainly industry) were in favour of creating for the RoHS Directive a scope which is independent from the scope of the WEEE Directive (on management of waste from EEE). Although on its own this would not eliminate the risks of incoherent implementation, it is generally felt that this will foster greater harmonisation and common understanding among the Member States; this is very important for a Directive based on Article 95 of the Treaty aiming also at the approximation of laws and requirements for a smooth functioning of the common market.

Broad support was given as well to the idea of integrating some WEEE provisions (which, according to the Commission services apply as well to the RoHS Directive) explicitly in the revised RoHS Directive. These concern in particular products intended specifically for military purposes and equipment which is part of another type of equipment which does not fall under the scope of the Directive. Integration of such provisions in the RoHS Directive would further enhance legal certainty.

With regard to spare parts there was strong support from industry for embedding the "repair as produced" principle (i.e. ensure availability of spare parts for all products placed lawfully in the market) more firmly in the Directive and extend it to cover products benefiting from exemptions, so that they do not reach their end of life prematurely, for example when the exemption expires or is removed.

There is apparently some uncertainty as to how spare parts and components are to be tackled under the RoHS Directive and this is reflected in the opinions expressed on the previous point; in the same context, a Member State suggested that the RoHS Directive should explicitly cover also the "non-electrical" parts of EEE.

DEFINITIONS

There were several comments related to definitions, some of them touching directly or indirectly also the scope of the Directive. As expected, many (industrial) stakeholders repeated that a clear definition and a harmonised implementation of what is "putting on the market" is of paramount importance for the smooth functioning of the internal market. Most suggested that the ongoing work on the draft texts (Decision and Regulation) for the revision of the EU legal framework for marketing of products (COM(2007)37 and COM(2007)53) be taken into account.

There were also suggestions for including additional definitions in order to clarify the scope ("grey areas") in particular with regard to "fixed installations" and "large scale industrial tools"; some even propose to introduce definitions for certain product categories (this had been suggested already for monitoring and control instruments by the abovementioned study). While there was a clear request from industry that spare parts are allowed for repairing and refurbishing equipment (see related point above) there was no generally accepted opinion as to whether a definition for spare parts is needed.

Finally, several (industry) stakeholders pointed out that the definition of "homogeneous material" provided in the Frequently Asked Questions (FAQ) document available in the WEEE/RoHS EUROPA website is not a good basis for measuring the maximum concentration values and for demonstrating compliance. An appropriate definition (taking into account technical problems such as sampling and disjointing) should be enshrined in the revised Directive.

FACILITATING IMPLEMENTATION

Enforcement of the RoHS Directive

This was the most commented topic. The feedback from stakeholders confirmed that there is a general perception of implementation and enforcement problems. Suggestions to address them stem obviously from the views on which is the main source of such problems and included the integration of a conformity assessment procedure in the Directive (allowing manufacturers to demonstrate compliance), the reinforcement of market surveillance and of administrative cooperation as well as the affixing of a dedicated, voluntary, "RoHS marking". The guidance provided in the abovementioned FAQ document and by the "EU RoHS Enforcement authorities Informal Network" does not have a legally binding character.

Concerning conformity assessment procedure, industry supports unanimously and strongly self-declaration based on "due diligence", i.e. that producers should not be held responsible for non-compliance if they can prove that they took all necessary measures to comply.

Industry stakeholders also attach a lot of importance to the use of standards and establish a clear link between the standards and the desired worldwide harmonised implementation of requirements related to hazardous substances in EEE, given the proliferation around the world of laws similar to, inspired of but not identical to the requirements of the RoHS Directive.

There was also support for the idea to integrate elements from the New Approach Directives (dealing, for example, with safety and electromagnetic compatibility of EEE products and machines) with which EEE manufacturers are by and large familiar, for demonstrating compliance.

Mechanism for exemptions

Stakeholders from almost all categories provided comments in this area. While the view that the procedure is lengthy and resource demanding seems to be shared by most stakeholders, there was no realistic coherent and comprehensive alternative proposal which would substantially shorten time and reduce effort, while at the same time respecting the transparency requirements and institutional arrangements.

Industry attaches a lot of importance to a speedy process (not delaying market access for hi-tech products with very short lead-to-market times) and full access to all stages of the process while insisting that cost and competition aspects should be considered. NGOs point out that exemptions should be examined only for new applications, that the "burden of proof" (including financial) should be on industry and that exemptions should be removed as soon as technically feasible alternatives become available.

CONCLUDING REMARKS

The responses to the invitation for comments on topics and for information supply for the RoHS Directive review covered a large stakeholder and geographical spectrum.

There were considerable variations in the extent and quality of the contributions; except for some studies concerning hazardous substances and their substitutes in EEE (for which the Commission services are particularly grateful), the detailed studies and evaluations or even evidence on other topics was rather scarce.

There was no fundamental criticism on the possible topics outlined in the consultation document; the few new topics identified by some stakeholders could in most cases be considered as more detailed subdivisions of a main topic.

Industry stakeholders insist on the need of ensuring harmonised implementation (in particular with regard to scope and demonstration of compliance) and speeding up the exemptions mechanism while NGOs are keen to enhance the environmental and health benefits of the Directive.