

POSITION PAPER

Brussels, 6 December 2019

EVALUATION OF DIRECTIVE 2011/65/EU ("RoHS"): Improving implementation in a Circular Economy context

Orgalim representing Europe's Technology Industries, innovative companies spanning the mechanical engineering, electrical engineering and electronics, and metal technology branches, thanks the European Commission for the opportunity to contribute to the public consultation on the evaluation of the RoHS Directive 2011/65/EU on the restriction of certain hazardous substances in electrical and electronic equipment (EEE).

Orgalim considers the RoHS Directive as effective, efficient, relevant and of added value as a sector specific tool addressing a number of important specificities of the EEE sector in support of a circular economy. Orgalim members are determined to deliver on the objectives of the RoHS Directive and ensure full compliance on time with its ambitious rules regarding the restriction of the use of hazardous substances in EEE. The RoHS Directive is a prominent tool contributing to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE and encourages companies in our sector to continuously improve product performance including through use of better performing, reliable and available substitutes.

In practical terms, our sector considers the **RoHS Directive as functioning well** in particular in the light of two important specificities reflecting the nature and complexity of the EEE sector and its global supply chains:

- **The RoHS Directive has been successfully amended in 2017 to strengthen the circular economy which supports the repair as produced principle of the Directive as well as the Article 9 of the revised Waste Framework Directive (EU) 2018/851 on prevention of waste.** The Directive (EU) 2017/2102 indeed resolves a shortcoming in the 2011 RoHS legislation, which would have run counter to the goals of a circular economy as it would have prevented the use and repair of used electrical and electronic equipment and forced scrapping of appliances that were still fully functional.
- **The sector specific, very targeted, scientifically based, structured product and application-specific mechanism for granting exemptions to substance restrictions ensures a high level of environmental and human health protection in the EU internal market.**

In our view, rather than reviewing the just amended RoHS Directive, **more focus and resources should be dedicated to improving its implementation** and further support companies, especially SMEs in their committed work on ensuring full and timely compliance.

Orgalim represents Europe's technology industries: companies that innovate at the crossroads of digital and physical technology. Our industries develop and manufacture the products, systems and services that enable a prosperous and sustainable future. Ranging from large globally active corporations to regionally anchored small and medium-sized enterprises, the companies we represent directly employ 11 million people across Europe and generate an annual turnover of around €2,000 billion. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

We have the following recommendations to improve the implementation of the RoHS Directive:

1. Improving consistency with other EU legislation, and consistency between the RoHS Directive, REACH Regulation and Ecodesign Directive
2. Improving and accelerating the implementation of RoHS Article 5 on the adaptation of the Annexes to scientific and technical progress
3. Better recognising the differences between typical B2B and B2C equipment when considering the use of RoHS as risk management option
4. Better taking into account aspects related to the global trade of EEE
5. Applying a risk based approach for sustainable chemicals management
6. Applying the “repair as produced” principle in a Circular Economy

We specify our recommendations as follows:

1. Improving consistency and coherence with other EU legislation, and in particular between the product-specific RoHS Directive and horizontal REACH Regulation and Ecodesign Directive:

• **RoHS Directive and REACH Regulation EC 1907/2006:**

Article 6 RoHS has in our view not been properly implemented to date. Two different substance identification and evaluation mechanisms continue to exist in parallel under RoHS and REACH, which not only create double costs but also result in inconsistent study outcomes. We believe that the best way is striving for **one holistic, common substance evaluation methodology between REACH and RoHS**. Whenever a substance is assessed there should be only one common methodology. The implementation of the REACH Regulation and RoHS methodology should apply this one holistic and commonly accepted scientific and technical evaluation per substance that should be valid for implementation under both legal acts in application of the REACH and RoHS common understanding.

The main source and primary vehicle for gathering information about substances and for evaluating them, including for the further implementation of RoHS, should be the REACH Regulation. The RoHS methodology for determining the hazardousness of substances should rely on the existing REACH methodology to identify substances with hazardous properties. The RoHS methodology should be based for example on the following main “REACH lists of substances”:

- Candidate List of substances of very high concern
- Information gathered in the context of Annex XV dossiers for the identification of substances of very high concern
- Substances restricted in articles listed in Annex XVII

The **coherent implementation of RoHS Article 6.1 with REACH** should in our view be improved as follow:

- RAC and SEAC opinions to be taken into account, or where not yet existing, to be sought for any substance restriction under either RoHS or REACH
- Proper implementation of ECHA Guidance R.18, and its results to be taken into account under RoHS
- (Additional) results REACH evaluation process, notably for substance aspects in waste phase, to be sought and taken into account
- The RoHS methodology should specify the information needed for proper RoHS implementation – this information should be gathered via REACH

- **RoHS Directive and EcoDesign Directive 2009/125/EU:**

Legislative consistency with the Ecodesign Directive 2009/125/EU should also be improved. The Ecodesign Directive represents the sector's central environmental product policy tool as it provides the EU-wide harmonised framework for the setting of eco-design requirements for energy related products, which includes products falling in the scope of RoHS. Considering the given interlinkages of different environmental product requirements over the life cycle of a product, we advocate for taking into account the respective eco-design study findings in the further RoHS and REACH implementation process.

2. Improving and accelerating the implementation of RoHS Article 5 on the adaptation of the Annexes to scientific and technical progress:

- Article 5 RoHS provides a **sector specific**, very targeted, scientifically based, structured product and application-specific **mechanism for granting exemptions to substance restrictions with a view to ensuring a high level of environmental and human health protection in the EU internal market**.
- However, during implementation, affected **companies face important delays and subsequent significant legal and planning uncertainty** due to insufficient human resources being dedicated to handle industry's exemption requests filed on time and with all underlying evidence. **Timely decisions on filed exemption requests and sufficiently long duration periods of granted exemptions** benefit the credibility of the tool and either positively or negatively impact companies' legal and planning certainty. Hence why, we have the following **recommendations**:
 - **Exemptions dossiers must be handled more quickly** as the time required by the Commission to grant an exemption is today 3 years of more compared to 12-18 months in 2006. The European Commission should dedicate the necessary resources to ensure proper and timely handling of an increasing number of RoHS exemptions and requests for renewals.
 - **Sufficiently long duration periods of granted exemptions** should be considered for substances for which there is evidence that substitution will not be technically possible in the short term. In areas where a lot of information and scientific evidence is available regarding short term substitution, RoHS allows for setting short exemption periods, which we support.

3. Better recognising the differences between typical Business-to-Business and Business-to-Consumer equipment when considering the use of RoHS as a risk management option:

Professional business partners are in a position to take appropriate risk management measures concerning EEE containing certain substances, since specifically educated and equipped. It is in our view important to balance the potential risks that B2B equipment could cause to the environment with the indisputable health benefits that, for example, medical devices provide to patients and the indisputable safety benefits that monitoring and control equipment provides to industrial clients and workers.

4. Better taking into account aspects related to the global trade of EEE:

RoHS has inspired other regions of the world to take similar action, which however more often than not have been gold-plated. In its international relations the European Union should foster a common understanding with its key trade partners, including global harmonisation of requirements and key compliance aspects (e.g.: definition of homogeneous material).

Considering that our industry acts globally and to support a circular economy, it is necessary to negotiate a regime such that our industry, and SMEs in particular, are presented with a converging legislative approach, leading to a technically, economically and environmentally sound structure in which to operate and manufacture the products that end users require across the globe. International standardisation is one way to help achieving this next to better tracking compatibility of European legislation, such as the RoHS Directive.

5. Applying a risk-based approach for sustainable chemicals management:

An environmental risk-based approach instead of a hazard based approach means prioritising actions and dedicating financial and human resources to those areas where most important and promising results can be achieved in terms of protecting human health and the environment in the EU internal market. It should be consistently applied in EU chemicals legislation.

6. Applying the “repair as produced” principle in a Circular Economy:

RoHS enshrines the “repair as produced” principle, which is a fundamental support for the Circular Economy to work in practice and which should be consistently applied in EU chemicals and other relevant legislation if further circularity potentials should be tapped.