

Orgalim position paper on the upcoming revision of the RoHS Directive

Executive summary

Orgalim, representing Europe's technology industries, welcomes the upcoming revision of the RoHS Directive 2011/65/EU on the restriction of certain hazardous substances in electrical and electronic equipment (EEE), which will contribute to the objectives of the European Green Deal, the Circular Economy Action Plan and the Chemicals Strategy for Sustainability.

Our technology industries, major downstream users and article manufacturers, are fully committed to reducing the content of hazardous substances in their products to support a more circular economy.

Here are our key messages on the public consultation about the revision of the RoHS Directive:

- The RoHS Directive is 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
- Restricting only a few hazardous substances with the highest relevance in electrical equipment has been a key success factor of this Directive. This, and the easy-to-understand provisions – even for small companies or for those located outside the EU – have contributed to the international flagship function of the European RoHS Directive, which must continue to be maintained
- More focus and resources should be dedicated to improving its implementation and to further supporting companies, especially SMEs, in their commitment to ensuring full and timely compliance
- Consistency with other EU legislation, and between the RoHS Directive, the REACH Regulation and the Ecodesign Directive (in the context of the Sustainable Products Initiative revising the Ecodesign Directive), should be improved
- The implementation of RoHS Article 5 on the adaptation of the Annexes to scientific and technical progress should be improved and accelerated
- The differences between typical business-to-business (B2B) and business-to-consumer (B2C) equipment when considering the use of RoHS as a risk management option should be better acknowledged
- Policymaking and decisions regarding chemicals should be risk-based not hazard-based
- The “repair as produced” principle in a circular economy should be strengthened and simplified by centrally anchoring its provisions in the legal text
- More account should be taken of the global aspects of EEE trade

- **We consider the RoHS Directive to be 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.** The RoHS Directive is functioning well, and was successfully amended in 2017 to strengthen a circular economy which supports the “repair as produced” principle of the Directive as well as Article 9 of the revised Waste Framework Directive (EU) 2018/851 on the prevention of waste. It is worthy of note that the RoHS directive has also become a global standard via the inclusion of its provisions in other jurisdictions.
- **More focus and resources should be dedicated to improving its implementation and to further supporting companies, especially SMEs, in their commitment to ensuring full and timely compliance.** Our detailed recommendations can be found in our [Position Paper](#) “Evaluation of Directive 2011/65/EU (“RoHS”): Improving implementation in a Circular Economy context”.
- **As highlighted in our [recommendations on the New Circular Economy Action Plan](#), we fully support the proposal to provide guidance and improve coherence between the product-specific RoHS Directive and the horizontal REACH Regulation and Ecodesign Directive (in the context of the Sustainable Products Initiative revising the Ecodesign Directive).** We also recommend that the different legal instruments (REACH, RoHS, Ecodesign, etc.) are used only for their intended goals. For targeted, and thus efficient, regulation, differentiated but harmonised legal instruments are preferable. Consistent application can therefore also avoid contradictory double regulation.
 - **RoHS Directive and REACH Regulation EC 1907/2006:** In our view, Article 6 of RoHS has 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 to achieve consistency is to strive 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 single holistic and commonly accepted scientific and technical evaluation per substance, and 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 level of hazard of substances should rely on the existing REACH methodology to identify substances with hazardous properties. Only substances with a very specific significance for electrical and electronic equipment should be regulated under RoHS, provided that a specific risk is associated with the presence of these substances in electrical equipment. For more details please see our [Position Paper](#) “Revising the RoHS substance methodology: establishing a common RoHS-REACH methodology for a mutually reinforcing, coherent and consistent implementation of REACH and RoHS”.
 - **The RoHS Directive and Ecodesign Directive 2009/125/EU (in the context of the Sustainable Products Initiative revising the Ecodesign Directive):** Legislative consistency with the Ecodesign Directive 2009/125/EU should also be improved. Considering the interlinking of different environmental product requirements over the life cycle of a product, we recommend taking into account the respective Ecodesign study findings in the further RoHS and REACH implementation process. For more details please see our [Position Paper](#) “Evaluation of Directive 2011/65/EU (“RoHS”): Improving implementation in a Circular Economy context”. Substance restrictions as a consequence of risks associated with the intrinsic chemical properties of substances should not be the subject of Ecodesign delegated acts.
- **The implementation of RoHS Article 5 on the adaptation of the Annexes to scientific and technical progress needs to be improved and accelerated:** Article 5 of RoHS provides a sector-specific, 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 European Union

Internal Market. However, during implementation, affected companies face considerable delays and subsequent significant legal and planning uncertainty due to insufficient human resources being dedicated to handling industry's exemption requests – even when filed on time and with all required evidence. Timely decisions on filed exemption requests and sufficiently long duration periods of granted exemptions benefit the credibility of the tool and can either positively or negatively impact companies' legal and planning certainty. We therefore 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 or more compared to 12-18 months in 2006. The 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 substantial information and scientific evidence is available regarding short term substitution, RoHS allows for setting short exemption periods – which we support.
- **Policymaking and decisions regarding chemicals should be risk-based not hazard-based.** We support a risk-based approach instead of a move towards a hazard-based approach (which is the precautionary principle) because the risk-based approach is based on scientific evidence of how the environment and population are affected. As stressed by the [Commission](#), the precautionary principle may only be invoked in the event of a potential risk and it can never justify arbitrary decisions.
- **Applying the “repair as produced” principle in a circular economy:** RoHS enshrines the “repair as produced” principle, which is a fundamental support for a circular economy to work in practice and which should be consistently applied in EU chemical and other relevant legislation if further circularity potentials are to be tapped. The regulations for spare parts and their reuse are too complex. We consider a simplification of the formulations in Articles 4 (4) and 4 (5) of the RoHS Directive towards a fundamental anchoring of the principle “repair as produced” in the RoHS Directive (as well as in the entire European chemicals legislation) to be an important step in the right direction. This would ensure that spare parts for a long-life product could be maintained under RoHS even after subsequent changes to the exemptions and substance restrictions. The success of RoHS is based on the stability and predictability of the restricted substances. Only if the restricted substances do not change over time for a specific single EEE is it possible to provide clear recommendations for repair, recycling and disposal, and to ensure the availability of functioning spare parts for the repair and refurbishment of long-life and complex products.
- **Better acknowledgement of the differences between typical business-to-business (B2B) and business-to-consumer (B2C) 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 they are specifically educated and equipped. In our view, it is important to balance the potential risks that B2B equipment could cause to the environment with the recognised health benefits that, for example, medical devices provide to patients, and the indisputable safety benefits that monitoring and control equipment provide to industrial clients and workers.
- **More account should be taken of the global aspects of EEE trade:** RoHS has inspired other regions of the world to take similar action. In pursuing the approach of a targeted revision of RoHS, it is important to keep in mind that any major change to the basic RoHS principles will involve a significant adjustment for companies – with associated expenses. Changes to the legal text should therefore be justified by measurable simplifications and improvement of processes, as well as the achievement of goals. The global flagship function of the RoHS Directive must be maintained. We call on the EU to work towards harmonisation of the many examples of global legislation similar to the RoHS. In its international relations the EU 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 which presents our industry, and SMEs in particular, with a consistent legislative approach, leading to a technically, economically and environmentally sound structure in which to operate and manufacture the products required by end-users across the globe. International standardisation is one way to help achieving this, together with further efforts to ensure the compatibility of European legislation such as the RoHS Directive.

Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of over €2,480 billion, manufacturing one-third of all European exports and providing 10.97 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

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