

Brussels, 17 December 2014

Comments on RoHS implementation: Scope review and amendment of the annex II-list of restricted substances

Orgalime would like to comment on two pending proposals concerning Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS 2"):

- 1) The review of the scope of the Directive and related amendment of the Directive through ordinary legislative procedure.
- 2) The amendment of the list of restricted substance of Annex II of the Directive through Comitology to restrict the use of further substances in electrical and electronic equipment (EEE).

1. REVIEW OF THE SCOPE OF DIRECTIVE 2011/65/EU

The European Commission's proposal for a review of the scope of RoHS 2 is based on the results of its impact assessment and the recommendations of a recent [study](#) undertaken by the Öko-Institut. Orgalime generally welcomes the conclusions of this study and specifically:

- Art. 2: Implementation of a horizontal solution covering all EEE newly in scope
Orgalime supports the recommendation made by the Öko-Institut study to integrate article 2(2) into article 4(3), and then delete article 2(2), with 21 July 2019 as the compliance date (option 3 of the study).
The current article 2(2) of the RoHS Directive provides for a transitional period until 22 July 2019 for EEE categories 1 to 7, and 10 (listed in the Annex I of the Directive), which are newly in scope of the Directive. However, based on its current wording, secondary market operations, such as selling, re-selling, reuse or refurbishment of such EEE would not be allowed beyond this date. As a consequence, those products would face shorter use and re-use phases and would be disposed of and scrapped earlier than necessary.
The proposal made by the study represents a horizontal solution for all articles newly coming into the scope of RoHS 2, which we consider essential for a non-discriminatory implementation of the Directive. It will now ensure that secondary market operation of products newly in scope and having been lawfully placed on the market before July 2019 can indeed be carried out, thereby creating an overall positive environmental effect.
- Art. 4: Implementation of an explicit exemption for spare parts for EEE newly in scope
Orgalime is also in favour of modifying article 4 of the Directive to introduce an explicit spare parts exclusion for EEE newly coming into scope and placed on the market before 22 July 2019, as recommended by the study. This meets the "repair as produced" principle of the Directive and will avoid that EEE is disposed of before reaching its real end-of-life.

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10 million people in the EU and in 2013 accounted for more than €1,700 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

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It will also remove any discrimination between EEE newly in scope and EEE listed in the current article 4(4) from a) to f). Such a solution will grant equal treatment to all EEE and will provide manufacturers with rules ensuring fair competition and a level playing field.

We encourage the immediate adoption of the Commission's pending RoHS scope review amendment of articles 2.2, 4.3 and 4.4 to increase legal certainty for manufacturers of EEE.

2. AMENDMENT OF THE LIST OF RESTRICTED SUBSTANCES (ANNEX II RoHS)

The European Commission is considering a draft amendment of the RoHS Annex II to add four new substances (notably the phthalates DEHP, BBP, DBP and DIBP) to the list of substances restricted for use in EEE. While we understand and welcome that the Commission has recently moved towards setting more realistic compliance deadlines, some key concerns remain:

- Any new substance restriction under RoHS, and any other legislation on chemicals, should be based on a robust, science-based and consistent substance evaluation methodology:
Orgalime remains seriously concerned that such an evaluation methodology is not in place for RoHS to date. The preparation of the proposal to add these four new substances to Annex II remains based on the initial methodology prepared by the Austrian Umweltbundesamt (UBA), which undoubtedly presents serious shortcomings and therefore is currently also under re-debate in the Commission's RoHS2 Experts Working Group. The evaluation dossiers for each of the substances proposed to be restricted are derived from the unconsolidated UBA methodology, which confirms that this methodology is immature and not fit for purpose. The current situation consequently risks setting a wrong precedent for the future substance evaluation and restriction procedure under RoHS beyond the currently debated four substances.
- EU chemicals legislation should be coherent:
Orgalime calls on the Commission to ensure that any new RoHS restriction proposal consistently implements the new ['Common Understanding Paper on REACH and RoHS'](#) prepared by the Commission and endorsed by the Member States Competent Authorities for REACH (CARACAL) in 2014. The four phthalates DEHP, BBP, DBP and DIBP are already listed in REACH Annex XIV. Following this Common Understanding, as soon as these substances will be restricted in EEE under RoHS, EEE should in return be exempted from REACH authorisation and restriction, pursuant to Article 58(2) of REACH. This is in our view not yet underway.

Considering the limited use of DEHP, BBP, DBP and DIBP in our industry and provided that sufficiently long transition periods are granted, Orgalime does not necessarily object to include these four substances in annex II RoHS. However, we do object to the application of the UBA methodology in its present form to any further substance evaluation beyond these four, and insist that a serious redrafting should be launched with the involvement of the affected industry before any further RoHS substance evaluation.

CONCLUSIONS

Concerning the RoHS scope review, Orgalime calls on the Commission to implement the amendments recommended by the Öko-Institut to the legal text of RoHS without delay. The amendment needs to be consistent with the New Legislative Framework (NLF) and the recently adopted Blue Guide. This will ensure that there is fair implementation and enforcement and it will provide the legal certainty needed by the industry for its operations.

Concerning the addition of the four phthalates to Annex II, Orgalime reiterates its serious concerns on the use of the UBA methodology, as it sets a wrong precedent in view of upcoming new substance reviews and potential restrictions. We urge the Commission to refine the methodology without delay and to really apply better regulation principles as promoted by the new Commission.