



# **REVIEW OF DIRECTIVE 2002/95/EC ON THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT (RoHS):**

## **ORGALIME Comments to Commission Stakeholder Consultation**

Brussels, 22 May 2007

Orgalime thanks the Commission for consulting stakeholders on the review of the above mentioned directive. Orgalime herewith provides its comments to the Commission's consultation document and submits background information in so far as it is available today.

This document is structured as follows:

1. Introductory Orgalime comments on the review of directive 2002/95/EC on RoHS and its link to the Review of directive 2002/96/EC on WEEE
2. Areas, on which Orgalime agrees with the Commission's initial list of topics for the RoHS review
3. Orgalime proposals for more detailed sub points to a number of topics included in the above mentioned Commission list (accompanied by evidence and supporting information).
4. New areas, which Orgalime suggests to be examined in the RoHS review and areas, which in our view should not be tackled under the RoHS Review (accompanied by evidence and supporting information).
5. List of further evidence and supporting factual information underpinning Orgalime's comments

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1. **Orgalime reiterates its introductory comments provided in Orgalime's position paper on the review of directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) of 19 February 2007, which are likewise valid for the RoHS directive. In particular, we highlight the following facts:**

- **The surroundings of the RoHS directive today differ significantly from the legislative environment situation at the time of adopting the directives.** In particular, other legislative initiatives that impact the RoHS directive have in the meantime been finally approved by EU regulators (for example: Directive 2005/32/EC establishing a framework for the setting of eco design requirements

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for energy using products (EuP), the regulation 1907/2006 on the registration, evaluation and authorisation of chemicals (REACH)).

In addition, the European Institutions have agreed on modifying the existing comitology rules in decision 2006/512/EC. **Orgalime believes that any review of the RoHS Directive has to be undertaken in the context of this clearly different regulatory landscape.**

- **Since the adoption of the WEEE Directive the European Institutions have also agreed on a policy for Better Regulation and Simplification.** Translated into RoHS, we believe that this would mean focusing on the main aspects of the directive and aligning them with Better Regulation principles, such as proper impact assessment, less administrative burden and red tape or stakeholder consultation before presenting proposals for revision.
- **At this moment in time, experience with and data on implementing the RoHS Directive are limited** since few member states have managed to transpose this complex directive in time. At the same time a number of implementing comitology decisions are still outstanding (i.e.: exemption requests).
- The priority for the review must be on **securing the functioning of the internal market** in this product related directive. The RoHS-Review should not be considered as a vehicle to correct failures or shortfalls in national transposition laws. Member states have to follow the text of the directive and transposition problems should be solved at a national level, with the active encouragement of the Commission. Where national transpositions, however, have evidenced shortcomings of the RoHS directive itself, due consideration should be given to fine-tuning the directive in such areas at EU level.

**2. Orgalime agrees with the following topics listed in the Commission's initial list of possible topics to be examined in the review:**

- Orgalime particularly supports the Commission's proposal to look into the **procedure and criteria for granting exemptions** with a view to examining the exemption requests in a quicker, more cost effective and comprehensive manner (including cost benefit considerations and taking into account innovation, competition and intellectual property issues).
- Orgalime equally welcomes that the Commission will examine, inter alia, the **possibility of integrating a uniform mechanism for demonstrating compliance**, including alternative mechanisms on the basis of accomplished work to minimize the risk of diverging interpretation practices in member states. Such a uniform compliance mechanism should in our view, be based solely on the manufacturer's self declaration.
- Regarding the **scope of the directive**, Orgalime agrees that looking into the relationship between WEEE and RoHS and the integration of some WEEE provisions related to the scope is of importance (see further Orgalime comments under part 3, in particular on the understanding that a product that is part of

another type of equipment that does not fall under the directive is out of the scope of RoHS).

Regarding the topic of **possible product groups to be included into RoHS**, and **categories 8 and 9** particularly, Orgalime is aware that the directive includes a review clause for these categories. However, before extending the scope of RoHS to new products, Orgalime believes that the uncertainties that today still exist with the present text of the directive should be solved as a priority before entering into new topics. For categories 8 and 9, Orgalime generally supports the final report of ERA Technology. At the same time, we underline the necessity that for certain applications the substances restricted under RoHS will still be necessary in the future (see ERA Technology Report and joint position paper of European associations of medical device manufacturers).

Regarding the **necessity of adapting the existing RoHS scope to further substances**, Orgalime expresses its reservation considering both, the still significant problems and uncertainties resulting from the present scope of RoHS and the fact that other Community legislation, and namely directive 2005/32/EC on Eco Design of Energy Using Products and Regulation 1907/2006 on REACH in particular, have meanwhile been finally adopted. Orgalime believes that a clear policy will become necessary to ensure coherent and consistent requirements for our sector rather than continuing multiplying requirements on same products in different pieces of EU legislation.

### **3. Orgalime suggests to also examining the following additional elements of these topics in the RoHS review:**

- Regarding the **scope of the RoHS directive**, Orgalime's industry is faced with diverging scopes of the RoHS directive in the different member states, in spite of the fact that the directive is based upon article 95 of the EC Treaty.

#### Evidence and supporting factual information:

- See different transposition laws of member states and, as far as existing, their national guidelines.
- Example: Car radios only designed to be built into cars are exempted from RoHS according to the explanations (FAQ's) of the European Commission. In the Netherlands, however, only car radios and navigation systems built in during a car's production are exempted, in contrast to identical car radios installed by a service station.
- Orgalime and its members notice confusion in the application of **article 2.1 WEEE and the Commission's guidelines on "fixed installations" and "finished products"** as given in the F.A.Q.s of May 2005 for the RoHS directive. Orgalime fully supports the Commission's view expressed in the F.A.Q.s and considers it as essential to clarify the relationship between the WEEE and RoHS Directives by amending the RoHS Directive with an own scope that incorporates the criteria of "fixed installation" and "finished products" directly into the RoHS Directive.

Evidence and supporting factual information:

- See different transposition laws of member states and, as far as they exist, their national guidelines.
- Orgalime guide to understanding the scope of the WEEE and RoHS directives of January 2006 lists examples of equipment for which member states apply article 2.1 WEEE differently or not at all (available at [www.orgalime.org](http://www.orgalime.org)).
- Any departure from the Commission's understanding at this moment in time, where industry has based its implementation on this understanding, would significantly disrupt the RoHS implementation process, while at the same time disregarding the spirit of the WEEE and RoHS directives:

The notion "fixed installation" is a settled term that is derived from existing Community law that applies equally to the same products subject to WEEE/RoHS.

If fixed installations were considered to fall under the scope of RoHS, as some authorities seem to argue, this would mean that installations in petrochemical, automobile manufacturing, pharmaceutical, material handling, power generation, water treatment or paper manufacturing plants would be subject to RoHS. This clearly was neither the intention of the WEEE directive and even less the intention of the RoHS directive when they were adopted.

Article 2.1 WEEE refers to all categories listed in annex I.A of the WEEE directive. The criterion of "*another type of equipment*" and its additional interpretation guideline of "*fixed installations*" therefore cannot be limited to a selected number of WEEE categories. For RoHS, it must be horizontally applied as a criterion on its own right. It must therefore be handled completely separately from the exclusion of "large-scale stationary industrial tools" as listed in category 6 of Annex IA/IB of the WEEE directive.

- When reviewing the RoHS directive, Orgalime considers it vital to involve the whole industrial supply chain. This is particularly important for the following areas:

**Regarding the substances covered by the RoHS directive (Article 6 of RoHS)**, the review has to be based on technical, economical and life-cycle considerations including global harmonisation considerations. In our view, the whole supply chain at an industrial scale has to be involved in order to ensure feasibility. There are different developments at a global scale with regard to the restriction of the use of certain hazardous substances in electrical and electronic equipment. That is why the review should also investigate the effects and burdens at a global scale and the relevance of electrical and electronic industry especially with regard to an international standardisation/harmonisation.

**Secondly, when the Commission analyses exemption requests**, it should cover the technical, economic and international implications in order to ensure that the proposal is feasible.

**Thirdly, when reviewing the procedures for market surveillance**, it is essential that Europe supports the ongoing work at the IEC level since the electrical and electronic equipment manufacturers act on highly competitive global markets. In particular, the work that IEC is carrying out on procedures for determining the levels of regulated substances in electro technical products should be considered for the RoHS directive.

Orgalime also doubts that the **present definition of “homogeneous material”** provides a basis for assessing compliance with the RoHS directive that ensures fair competition in the market place.

Evidence and supporting factual information:

- Divergences in compliance mechanisms by member states disrupt the functioning of the internal market. For example, in Estonia all products registered under WEEE have also to comply with RoHS, although these products have different exemptions (categories 8/9 are exempted from RoHS). In addition supplier declarations for all products have to be added, which are not required in other countries.
- Orgalime Guide to understanding the specific obligations of the RoHS directive of March 2006 (lastly updated: January 2007), which includes a list of suggested replies to questions arising in the supply chain on RoHS compliance (page 11f).

**4. Orgalime proposes that the following additional topic to the Commission’s initial list should be examined in the review:**

- Orgalime proposes to introduce **a continuous and more structured stakeholder consultation mechanism and the creation of a Consultation Forum to the RoHS directive** in particular. Such a body could contribute to a more efficient and effective mechanism on exemptions to the RoHS directive.

Evidence and supporting factual information:

- Better Regulation and Simplification Communication of October 2005
- Directive 2005/32/EC Eco Design of Energy Using Products, which the Commission quotes an example of Better Regulation, and especially article 18 of this directive that implements Better Regulation principles for our industry sector
- Orgalime supports the **definition of key compliance terms, such as “placing/put on the market”, under the ongoing legislative procedure to the Commission’s proposal for the “Marketing of Products” package**, instead of conducting parallel discussions under the RoHS review.

Evidence and supporting factual argumentation:

- Commission proposal for a Regulation setting out the requirements for accreditation and market surveillance to the marketing of products (COM (2007)37) and COM (2007)53
- Orgalime believes that in its international relations the **European Union should foster a common understanding with its key trade partners that have come forward with RoHS similar legislation exists, such as China**, including **global harmonisation** of requirements and key compliance (e.g.: definition of homogeneous material).

**5. Further background information and supporting factual evidence to Orgalime's comments is given in the following documents:**

- Orgalime Guide to understanding the scope of directive 2002/96/EC on WEEE and directive 2002/95/EC on RoHS available at [www.orgalime.org](http://www.orgalime.org)
- Final Report of ERA Technology study
- IEC 62321, Ed.1: Procedures for the determination of levels of six regulated substances (Lead, Mercury, Cadmium, Hexavalent Chromium, Polybrominated Biphenyls, Polybrominated Diphenyl Ethers) in electrotechnical products
- Directive 2005/32/EC on Eco design of Energy Using Products (EuP) and its memorandum of understanding
- Joint Position Paper of European associations of medical device manufacturers

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Orgalime thanks the Commission for considering its comments and looks forward to contributing to the further work of the institutions on this complex directive.