



The Director General

Mr. Iain Nicol
Rapporteur of the RoHS2 FAQ
Working Group
BIS - Green Economy Team
1 Victoria Street
London SW1H 0ET

Brussels, 13 March 2012

Directive 2011/65/EC (RoHS2): Future Guidance/FAQ

Dear Rapporteur, dear Mr. Nicol,

Thank you again for giving Orgalime the possibility to present the opinion of our industry's concerning the scope exclusions of LSF1/LSSIT and related scope issues, notably the definition of EEE and dependent, at the occasion of the recent RoHS2 FAQ Working Group meeting on 1 March 2012.

Following these discussions, we are contacting you today to confirm the understanding that the legal text of the RoHS2 Directive does not provide grounds for the shifting of compliance responsibilities from the manufacturer/importer of EEE to the installer of "installations". Our view that the substance restrictions and CE marking obligations established by RoHS2 arise for manufacturers and importers of EEE, however not installers, is supported by the following arguments:

- The requirements to comply with the RoHS2 Directive's substance restrictions and CE marking obligations are established in articles 4 and 15, which regulate the "*placing on the market*" of EEE. Thereby, the obligations of articles 4 and 15 are addressed to manufacturers/importers alone.
- The RoHS2 Directive does not contain the notion "*made available and/or putting into service*", neither in articles 4 nor 15, nor elsewhere. This is rightly so, as the substance content of an EEE can only be determined at the very first step of its design and manufacture, and it is clear that "design and manufacture" are different from "installing/putting into service".

The European Engineering Industries Association

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- Subsequent actors in the supply chain therefore bear responsibilities of verifying technical documentation and the presence of the CE marking on the EEE/apparatus that are IN the scope of RoHS2. However, they have rightly not been given responsibilities on the substance content of an EEE/apparatus that has already been designed, manufactured and placed on the market before the EEE was supplied to them.

In addition:

- Where CE Directives establish requirements on installers of EEE in addition to the requirements on manufacturers/importers, as in the EMC or Lifts Directives, the respective legal provisions regulate the “*placing on the market and/or putting into service*” of EEE, thereby spelling out the relative obligations clearly in the text of the Directive itself.
- Following the Commission’s Omnibus alignment proposal of these existing CE Directives with the New Legislative Framework (NLF) the notion of “*placing on the market and/or putting into service*” has been replaced by “*making available and/or putting into service*” (please see Commission proposal of the NLF Omnibus alignment of the EMC and Lifts Directives, at http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/new-legislative-framework/index_en.htm, and the text of the existing Directives at http://ec.europa.eu/enterprise/sectors/electrical/index_en.htm).

This fits into the logic of RoHS2, which in article 2.4 explicitly states that the Directive does not apply on “large scale fixed installations”.

We wish to stress that only criteria that can be physically attributed to the equipment to be placed on the market itself (thus, “ex ante” criteria) can provide a reliable basis for RoHS2 compliance and enforcement.

In the light of this, Orgalime confirms its understanding that a criterion of physical size in terms of a precise figure of size, weight or volume is not appropriate for providing guidance on the scope exclusion of “large scale fixed installation”: It cannot help to guide manufacturers/importers of EEE in preparing for compliance with their obligations arising from RoHS2, and it cannot help control authorities in their task of market control and enforcement. We therefore reiterate our request to abandon this criterion in any possible RoHS2 guidance document on “large scale fixed installations”.

We remain available for any further information that you may wish to obtain.

In particular, we look forward to following up the Working Group’s invitation of submitting comments to the draft working document on “large scale” in the context of “large scale fixed installations/large scale industrial tools”.

Thanking you once again for engaging in this exchange of views with us.

Yours sincerely,

Adrian Harris
(Signed in original)

Cc: Members of the RoHS2 FAQ Working Group