



ORGALIME Position Paper on Assessment of Compliance in the RoHS Directive
Brussels, 14 March 2005

INTRODUCTION

Directive 2002/95/EC on the restriction of certain hazardous substances in electrical and electronic equipment requires that electronic products put on the EU market after 1 July 2006 should not contain lead, mercury, cadmium, hexavalent chromium, PBB or PBDE.

The RoHS directive also foresees that there should be **maximum concentration values** up to which the presence of these substances shall be **tolerated**.

Member States have to ensure that electrical and electronic equipment placed on the market after the given deadline complies with these requirements.

The RoHS compliance dates are approaching rapidly. The electrical and electronic industry in Europe has launched internal RoHS-compliance programs in order to meet the deadlines and now urgently seeks legal certainty for its working assumptions.

Companies are at present designing, with their suppliers, products, which are to be compliant.

Our industry has issued in May 2004 a joint industry *“Guidance on the implementation of Directive 2002/95/EC on the restrictions on the use of certain hazardous substances in electrical and electronic equipment (RoHS)”*.

Orgalime of course supports this position paper and the principles stated in it and bases its further thoughts and suggestions on this existing guidance document.

The present paper is meant to provide key suggestions on how to proceed in the future with the assessment of RoHS compliance.

WHERE IS THE PROBLEM?

As mentioned in the introduction, companies are at present internally preparing for RoHS and now seeking urgently legal certainty for their working assumptions.

The RoHS directive does not pronounce itself on the evidence of compliance, nor does it include aspects of market surveillance such as safeguard clauses related to withdraw products from the market.

When discussing RoHS compliance, this concerns an area of typical inter-industry/business relationships. For example this includes the communication between producer and his component supplier in a highly complex supply chain.

Market surveillance mechanisms in the 25 Member states and enforcement mechanisms should be harmonized to avoid trade barriers and fragmentation of internal market.

The present lack of clarification of tolerated concentration values of RoHS banned substances and of the definition of “homogenous material” may cause unfair competition due to different interpretation of the RoHS directive. This needs to be dealt with by the Commission.

ORGALIME PROPOSAL FOR THE WAY FORWARD

To avoid unnecessary costs caused by uncertainties, unreasonable requirements on documentation or differences in market surveillance between Member states, there is a need to discuss assessment of compliance and market surveillance.

Such a dialogue should take place between the Commission, Member states and the industry.

a) Assessment of Compliance

In our opinion, the requirement on assessment of compliance can only work in practice if it is built on presumption of conformity combined with intelligent market control.

Self-certification by manufacturers is already used in many EU **New Approach** directives. In the interest of a **consistent** approach in market surveillance and enforcement of those directives that already apply on our products, RoHS should also make use of this principle.

If there is a reason to doubt RoHS compliance, the economic operator who places the product on the market must be able, at the request of the authority, to demonstrate compliance with the RoHS directive through documentation. The documentation required could contain such documents as contractual agreements, evaluation of suppliers, material declarations, technical specifications, etc.

The requirements and procedures on declaration of conformity should in our view be **harmonized** cross EU Member states in order to facilitate the communication with market surveillance authorities.

- Orgalime believes that **self-declaration** should be the principle, as it offers an **efficient** and **cost-effective** way forward.
- Documentation should only be requested by the authorities, if there is a reason to doubt compliance
- Testing should in our view be done only when there is a justified reason to doubt that a product is RoHS-compliant.
- Orgalime is of the opinion that there should not be any third party intervention.

At the present time, the international electro technical committee (IEC) is in the process of voting on a new work item proposal on possible procedures for determining levels of regulated substances in electro technical products.

Orgalime believes this initiative will provide clarity and secure some agreement in the area of how to determine the concentration of regulated substances in electrical and electronic equipment at an international level. We hope that useful result can be achieved in time for the RoHS deadline. We will closely and actively follow developments at IEC level.

b) Market Surveillance

A harmonised approach to market surveillance by all Member States is of vital importance as it provides legal certainty to producers placing products on the EU market, diminishes potentially onerous obligations of the national enforcement authorities and helps avoiding conflict. The objective should be a common approach towards market surveillance and enforcement.

In our view, information exchange between Member states should be ensured and facilitated e.g.:

- By establishing a database to share information between Member states (if a product has been identified as non conforming in one MS, other MS should be informed), or

- Member states could also meet up in working group (e.g. one or twice a year to exchange information on practical issues of market surveillance) in order to ensure effective market control and a harmonised enforcement of the directive.

CONCLUSION

Member States have to ensure that goods placed on the markets comply with the RoHS requirements.

Companies must know what to do to justify work and investments. Additional costs caused by uncertainties or unreasonable requirements on documentation should be avoided. Therefore, Orgalime recommends establishing **self-declaration** as a principle as it offers an efficient and cost-effective way forward.

It is in the interest of the environment and of the Internal Market, to avoid as far as possible differences in market surveillance between Member states. Therefore, Orgalime advocates for a **harmonised approach to market surveillance cross Europe**. This would save costs and help avoiding conflicts.

As a pre-condition to the above and in order to have a consistent interpretation of the Directive, it is crucially important to have a decision on tolerated maximum concentration values and to have defined “homogenous material”.

Timescales are running short.