

Brussels, 3 July 2014

REACH Implementation and Spare Parts

The European engineering industries represented by Orgalime welcome the debate initiated by the European Commission to address the challenges related to REACH implementation and spare parts, notably with regards to authorisation and restriction.

The issue for our industry is similar to that of the automotive and aerospace industries: our industry produces spare parts to ensure proper repair, re-use and upgrade of equipment, both in the B2C and the B2B area.

The availability of spare parts brings significant environmental benefits, as it guarantees longer product lifetimes and prevents waste generation earlier than necessary, which represent core elements of the EU's resource efficiency policy objectives and the EU waste hierarchy.

Whilst the maintenance and repair of our products in both the B2B and B2C areas, may vary greatly depending on product type, users generally expect to be able to service, maintain and upgrade their equipment for a lengthy period of time, varying between 2-3 years for some consumer goods up to 15-20 years and more for capital goods. In the B2C field, the European engineering industries have to comply with legal warranty obligations established to protect consumer rights. In the B2B field, clauses in individual supply contracts impose legal warranty and maintenance obligations and spare parts availability too, while the sector faces long lifetimes and high reliability and safety requirements on equipment used in many critical technical applications, such as power plants, energy generation, transmission or distribution networks, chemical or any other industrial or manufacturing production site, hospitals, airports, harbours or airplanes.

It is therefore crucial that spare parts should be available in a timely and functional manner and at a reasonable cost for the maintenance, repair, refurbishment and remanufacturing so that such activities remain cost-effective, viable and overall sustainable.

Notwithstanding the "Common Understanding of the REACH-RoHS", as currently under debate in CARACAL, we believe that concerning spare parts, there is an issue related not only to REACH authorisation but also to REACH restrictions (Annex XVII). The inclusion of a substance used in spare parts into Annexes XIV or XVII of REACH creates a number of challenges, which we detail in this paper.

Orgalime calls on regulators to apply the "repair as produced principle" whenever a substance is to be authorised for use or restricted. Specifically, Orgalime proposes that:

- In the short term, the Commission should apply the "repair as produced principle" in application of article 58.2 REACH for our sector. Also, longer transitional periods, to be granted for all spare parts when substances are included in Annex XIV of REACH, would indeed be helpful. When substances are included in Annex XVII of REACH, the REACH and RoHS common understanding paper approach should be followed and its principles mirrored, as illustrated below.

Orgalime, the European Engineering Industries Association, speaks for 40 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2013 accounted for some €1,800 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

- In the longer term, the “repair as produced” principle should be included directly in the legal body of the REACH Regulation itself, thus exempting spare parts from Articles 56 and 67 REACH in particular.

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1. BACKGROUND

The RoHS Directive¹ and other EU sector specific environmental legislation, such as the ELV² Directive, foresee exemptions for spare parts used for the service, maintenance and repair of products already placed on the market before the entry into force of any new substance restriction. These derogations are known as the “repair as produced” principle and allow the prolonging of products’ lifetimes without manufactures or users having to carry any additional costs due to re-designing, re-testing, re-manufacturing or otherwise.

While these principles are very well established in the framework of the RoHS and ELV Directives, to date the REACH Regulation does not include a horizontal exclusion of spare parts but shifts the issue to the implementation of REACH restriction and authorisation.

Therefore, the implementation of REACH with regards to spare parts can affect our sector in several ways:

- When it comes to authorisation, issues arise when manufacturing of spare parts (including legacy spare parts) occurs *after* the manufacturing process of the parent product itself. If the spare part contains a substance newly included in Annex XIV of REACH, European producers of such spare parts will need to seek a REACH authorisation to be able to use such a substance in those parts, or will have to substitute it. Our industries are committed to substitute hazardous substances where reliable and better performing alternative substances or technologies are available without compromising other essential product parameters, including safety, fitness-for purpose or other environmental performances, such as energy efficiency. However, for spare parts, substitution implies that the component needs to be re-designed each time a new substance used in that component is regulated. This is not always technically feasible, nor cost efficient, while also being a time consuming process. This of course affects the competitiveness of companies.
- When it comes to restriction, as soon as a substance is added into the Annex XVII of REACH, it remains unclear whether spare parts already placed on the market before the REACH restriction entered into force will be allowed for use for maintenance, refurbishment or upgrade. This is problematic when spare parts are manufactured at the same time as the parent products, kept in stock during the service parts retention period and used whenever needed to maintain, upgrade or prolong the life of products already placed on the market, or to satisfy contract or legal obligations, such as legal warranties for consumers.

2. ENVIRONMENTAL AND ECONOMIC IMPACTS

If the “repair as produced principle” were not properly accounted for in REACH implementation, we anticipate the following negative impacts for the environment, economic operators, and users, professional clients and private consumers within the European market:

¹ Recital 20 of Directive 2011/65/EU reads as follows: “As product reuse, refurbishment and extension of lifetime are beneficial, spare parts need to be available”. Articles 4.4 and 4.5 of Directive 2011/65/EU spell out the applicable spare parts exclusions from the RoHS substance restrictions.

² Recital 2 of COM Decision 2005/438/EC amending Annex II to Directive 2000/53/EC: *As product reuse, refurbishment and extension of lifetime are beneficial, spare parts need to be available for the repair of vehicles which were already put on the market on 1 July 2003.*

- **REACH implementation would undermine the EU's Resource Efficiency Policy:** if following the inclusions of new substances in Annex XIV costs for the production of spare parts are too high, manufacturers will no longer be in a position to ensure the service, repair or refurbishment of products or to comply with legal warranty obligations. Alternatively, in case costs of spare parts significantly increase due to higher production costs, industry and customers may be discouraged from repairing machines and products. This may result in the disposal of machines and products altogether earlier than necessary. With regard to restriction, following the entry into force of new rules on substances, existing stocks of already manufactured, never used spare parts would have to be scrapped. In both cases, resources would be unnecessarily wasted, which is contrary to the stated objective of the EU Resource Efficiency policy.
- **Decreasing availability of spare parts for users, both professional and private:** re-designing a spare part each time a new substance is regulated would imply new testing. The modified component would need to be tested both, as an individual part and as part of the whole equipment, since our products need to be submitted to testing and conformity assessment procedures to meet all relevant market and legislative requirements. However, in case the original equipment is no longer in production, redeveloping and remanufacturing spare parts for a 20 years old product may not be technically feasible.
- **Increasing costs and risks for industrial users:** the non-availability of spare parts for use in existing industrial installations would greatly disadvantage European industrial end-users and international end-users of European industrial installations, who have already made significant investments in systems and personnel that utilise these products. End-users, such as European manufacturing industries or the power generation sector, will no longer have access to proven safe and reliable spare parts on the EU market, thus potentially increasing their costs whilst also decreasing the reliability of their factories, plants and other installations. This puts at significant risk the security of not only their workers, but also of the whole area where they are located. Other end-users who use the same industrial products and where safety is critical (for example, defence, health, research and development, ships, airplanes, communication, large amusement rides, etc.) would be similarly disadvantaged, while the European producers of such industrial installations and equipment would face negative competitiveness impacts.
- **Increasing costs for manufacturers:** in most cases, spare parts for electrical and electronic equipment (EEE) lack versatility and are specifically made for a specific product. For spare parts already in stock before restrictions on substances enter into force, manufacturers would need to retroactively confirm with their suppliers (who themselves need to confirm upstream in the supply chain with the raw materials supplier) if the newly regulated substance is present in the product above the given threshold. This will create extra efforts and costs in the supply chain. If a supplier cannot provide retroactive information on materials/parts manufactured in the past, chemical analysis would have to be done (which will be destructive and create extra costs).
- **Increasing costs for users:** if manufacturers have no other choice than re-developing and re-manufacturing spare parts, the additional costs will (partly) have to be borne by users.
- **Discrimination of products manufactured in the EU and of products manufactured outside the EU:** given the fact that authorisation applies to the manufacturing process of articles and spare parts produced in the EU, but not to those outside Europe, it will lead to an unbalanced situation for European manufacturing industries. As principle consequence, the non-application of the "repair as produced" principle results in an incentive for outsourcing the manufacture of products and their spare parts to non-EU countries, where generally less and lesser risk management measure apply for the same processes, and where European authorities have no enforcement powers.

3. PROPOSED SOLUTION

In order to avoid the detrimental effects on the environment, EU manufacturing industries and consumers, through hindered maintenance, repair, refurbishment or extension of a product's lifetime activities and constraints on product warranties, we call on the European Commission and Member States to properly take into account the "repair as produced principle" whenever a substance is proposed for restriction or authorisation.

In the short term, **as regards to substances subject to authorisation** (Annex XIV REACH), we invite the Commission to apply the "repair as produced" principle in application of articles 58.2 REACH. The possibility to exempt the uses covered by the RoHS restriction (including its exempted applications) from the authorisation process under REACH pursuant to Article 58(2) of REACH is described as a possibility in the Common Understanding Paper RoHS-REACH. It is Orgalime's preferred route to solve the issue. The solution suggested by the Commission of applying significantly longer transition periods (latest application date /sunset date) for the use of the given substance in spare parts, can be complementary but should not only apply for legacy spare parts but all spare parts. It will ensure that spare parts continue to be manufactured in the EU as originally designed in the article and perform their intended function and required reliability and safety levels.

As regards to restrictions on the use of substances in electrical and electronic equipment (EEE), based on the REACH and RoHS Common Understanding paper approach, and mirroring its principles depending on the scenario:

- In the case of a substance restriction proposed for a substance under REACH and already regulated by RoHS, we suggest exempting EEE from the scope of the restriction (art.58.2 REACH). In this case, the RoHS spare parts exclusions of Articles 4.4 and 4.5 RoHS will apply directly.
- In the case of a proposal for a restriction under REACH for a substance used in EEE but not yet covered by RoHS, the Common Understanding Paper suggests the option of "starting the restriction procedure under REACH, and if RAC and SEAC confirm that a restriction of a substance in EEE is justified and proportionate, to implement it under RoHS", which we support. In this case, the RoHS spare parts exclusions of Articles 4.4 and 4.5 RoHS will apply directly, too.

In the longer term, we advocate for including the "repair as produced" principle in the legal body of the REACH Regulation itself, as sector specific legislation already does today. This would mean that spare parts should be particularly exempted from Articles 56 and 67 REACH.

4. CONCLUSIONS

The European engineering industries fully support the objectives of the EU's chemicals policy acquis, including the REACH Regulation, which aims to ensure a high level of protection of human health and the environment, while enhancing competitiveness and innovation. We are fully committed to the responsible use and risk management of chemicals in our manufacturing processes, proper supply chain management and the development of sustainable products, systems and technologies in overall respect of environmental and human health objectives.

Our industries are committed to substitute hazardous substances where possible, leading to overall environmental improvements in line with REACH and RoHS. However, the question of substitution of substances in spare parts is interlinked and conflicting with different policy objectives. Therefore, a common understanding and a political solution is needed to solve an environmental, practical and is also cost issue in terms of reducing overall negative impacts on the industry, authorities, consumers and society as a whole.

The European Engineering Industries Association

In order to solve the environmental policy conflict of REACH and Resource Efficiency, as well as the detrimental effects at the level of product warranties, maintenance, reuse, refurbishment and extension of products' lifetime activities, we call on the European Commission and Member States to properly take into account the "repair as produced principle" whenever a substance is proposed for restriction or authorisation.

The proposed solutions both, at short and long term, should allow the industry to focus on the development of sustainable products, systems and technologies in line with applicable legislation and in line with the principle of non-retroactivity of law. Industry and consumers needs to be able to rely on the principle that products and their spare parts are subject to those legal requirements that were in force at the moment of the first placing on the market of the parent product (no retroactivity of law on spare parts). This principle at the same time serves the environmental purpose of resource efficiency, since it avoids appliances to become waste more early than necessary and encourages our clients to indeed strive for proper maintenance, repair, refurbishment and upgrade of existing equipment.



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