ORGALIME

Position Paper

Brussels, 19 November 2010

RoHS RECAST PROPOSAL: TIME FOR COMPROMISE AND FOR MOVING ON

While Orgalime feels that it is now time for the European Institutions to achieve a compromise on the recast proposal for Directive 2002/95/EC on the Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS), which reconciles the views of different parties and takes into account a number of concerns of our industry, there are still issues which we feel will need to be resolved for the implementation of the RoHS Recast Directive to make this legislation truly workable and in the future to provide legal certainty to companies.

These include:

- The extension of the scope of the RoHS directive to all EEE
- The unequal weight of criteria for granting RoHS exemptions and the significant impact of the RoHS recast on some sectors which need exemptions for specific applications
- The introduction of a RoHS substance evaluation methodology almost entirely independent from the REACH Regulation
- Achieving consistency between RoHS exemptions, REACH authorisation, and REACH exemptions from authorisation
- A better alignment of the RoHS directive with the New Legislative Framework

We provide details of these concerns hereafter in the Annex to this position.

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Annex to the Orgalime position paper of 19 November 2010
on the recast of the RoHS directive

1. Scope

Orgalime remains concerned with the proposal to extend the scope of the RoHS directive to all EEE, including associated parts, since the impacts of such a far-reaching modification have not been subject to a representative impact assessment at EU level. Evaluating consequences of substantial changes to the existing directive after the adoption of a recast directive is contrary to Better/Smart Regulation principles, in particular as we are seeing the extension of a directive which proposes to dealing with capital goods much in the same way as consumer goods.

Our fundamental request is to ensure that EU legislation is workable and enforceable in practice. The above mentioned impact assessment and the introduction of delay for products not covered by the existing directive will not secure full legal certainty to producers as to whether their product may fall under the scope. However, the impact assessment should help to give predictability to producers as well as time to comply with RoHS requirements after the adoption of the Commission proposals. In the meantime we feel that guidance documents will be needed to clarify the scope.

2. Methodology for evaluation of substances

Orgalime supports that there should be clear criteria and procedures for identifying and evaluating substances before restricting hazardous substances in electrical and electronic equipment. The RoHS substance evaluation methodology should, in our view, follow a risk based approach and evaluate substances on an individual basis. It should be consistent with REACH and particularly assess waste phase impacts of a substance from a life cycle perspective.

However, the proposed RoHS methodology seems to be almost entirely cut off from Article 69-72 REACH. It isolates the assessment of the end of life impacts of a substance from its other life cycle stages (i.e. the use phase) and introduces the precautionary principle as well as the “group of similar substances” approach. Consequently, this independent methodology may lead to contradictions with other major EU policies and to undesirable environmental impacts. Orgalime supports the deletion of Annex III of substances for evaluation, thereby avoiding a duplication of evaluation procedures and unnecessary administrative burdens for companies, in particular SMEs, as well as authorities, and stigmatising substances without a scientific basis.

3. New restrictions

Orgalime supports the rejection of any immediate new substance restrictions in Annex IV. Orgalime does not per se object to new substance restrictions: But new restrictions must, in our view, be scientifically evaluated beforehand and ensure that the shift to alternatives provides better performance in environmental and technical terms.

4. RoHS exemptions and relationship with REACH authorisations

Orgalime supports improving the criteria and procedure for renewal of established RoHS restrictions. In particular, we welcome the introduction of a format for applying for RoHS exemptions, precise deadlines for the Commission for taking decisions, as well as the case-by-case approach for validity and grace periods. However, our industries remains concerned with criteria for granting RoHS exemptions and the missing timeline for granting new exemptions. In addition to the availability of substitutes, the reliability of such substitutes and socio economic criteria should have been equally taken into account to include specific application in Annex V & VI.

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We also would like to remind regulators of the significant impact of the RoHS recast, on today's research into medical technology and equipment availability for heavy-duty applications. Since needed exemptions for specific applications have not been validated in the recast, innovative technologies, for example to provide better and earlier diagnosis and even new treatments may no longer be available to patients after 2014. Equally, we are running the risk that CE marked refurbished equipment originating from outside Europe will no longer be available. As a consequence, patient care will be negatively impacted, since this prevents the use of the latest technology for more and more hospitals with limited budgets.

To ensure consistency between EU legislation, in particular with the REACH Regulation, and to reduce unnecessary administrative burden and related costs, duplication of exemptions procedures for the same substances in the same products should be avoided. The RoHS recast was the opportunity to clarify the relationship between RoHS exemptions, REACH authorisation, and REACH exemptions from authorisation. The opportunity has been missed to bring forward such improvements

5. Alignment with the New Legislative Framework (NLF)

Orgalime supports the introduction of the New Legislative Framework in RoHS. However, a number of unjustified modifications in relation to the NLF will increase the administrative burden in RoHS in relation to the NLF.

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