ORGALIME

Position Paper

Brussels, 15 September 2010

OPTING FOR A TRULY HARMONISED SCOPE IN THE ROHS DIRECTIVE SECURING LEGAL CERTAINTY AND PREDICTABILITY FOR EEE PRODUCERS

Considering that the European Parliament and Council are negotiating on a first reading agreement on the Commission proposal, we would like to request your active support for addressing our fundamental concerns, in particular on the scope of the Directive.

The RoHS recast proposal claims to simplify existing legislation and to avoid unnecessary bureaucracy and administrative costs in line with Better Regulation principles of the EU. However, the RoHS recast proposal in our view fails to realise this objective, in particular since it would create legal uncertainty and worsen the current situation in terms of predictability for producers of electric and electronic equipment.

Therefore, Orgalime's fundamental request to regulators is to ensure an EU legislation that is workable and enforceable in practice, securing legal certainty and predictability for European industries by supporting the following main proposals:

- Carrying out a representative impact assessment at EU level for any substantial change to the existing directive, such as for the far-reaching proposals for an open scope or new substance restrictions before the adoption of the recast Directive.
- Opting for a truly harmonised scope in the RoHS Directive itself that improves the current situation in terms of legal certainty and predictability for producers of electric and electronic equipment – an open scope does not contribute to clarifying remaining interpretation issues under the existing directive but introduces more questions than answers
- In any case, introducing a concise but comprehensive set of scope exclusions. In our position paper: Main priorities and proposals for further proceedings on RoHS recast of 19 July 2010, we explain the necessity for specific exclusions from the scope. We want to stress that it is of utmost importance that the generic definition provided will not be changed during negotiations processes.

www.orgalime.org

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
Ass. Intern. A.R. 12.7.74 | VAT BE 414341438

- **Concerns on the open scope**

ORGALIME remains concerned with the proposal to extend the scope of the RoHS Directive to all EEE, since the impacts of such a far reaching modification have not been subject to a representative, thorough impact assessment at EU level.

The EP ENVI Committee proposes in amendment 23 that the Commission shall submit a report and legislative proposals for further scope exclusions where appropriate. We understand that discussions at the Council level propose to examine further possible consequences of the open scope after the entry into force of the Directive and present legislative proposals amending the open scope.

We understand that these proposals for an open scope would be combined with an evaluation of possible consequences of such an open scope within four years after the entry into force of the Directive, that is to say carrying out an impact assessment after the entry into force of the RoHS recast Directive. Consequently, the scope of the recast Directive might be amended by ordinary legislative procedure (ex co-decision procedure) on the basis of this impact assessment and has to be transposed by the Member States within another two years after the entry into force of the Directive (total of six years).

Evaluating consequences of substantial changes to the existing directive after the adoption of a recast directive is contrary to Better/Smart Regulation principles. However, the impact assessment is not only a fundamental principle of Better Regulation, it also helps to close knowledge gaps and to avoid undesired negative consequences, in particular on SMEs, while identifying areas where real environmental gains can be achieved. As acknowledged in the European Institutions' own Inter-institutional Agreement[1], it is crucial that the consequences, costs and benefits of an envisaged measure are assessed and made available through a representative impact assessment at EU level before legislation is laid down.

- **The need for a proposal enforceable and workable in practice**

Without repeating the aforementioned arguments on Better/Smart Regulation principles, we want to stress that the proposed timeline is not suitable for our industries. It will not give sufficient predictability to producers whether their product may fall under the scope, nor enough time to comply with RoHS requirements after the adoption of the Commission proposals.

Orgalime's industries are producing complex products with hundreds and thousands of different components, which are sourced around the globe. Since design and creation of some products have very long cycle development, producers need sufficient predictability, reliability and certainty to develop innovative products. We also need sufficient time to submit our products to any testing and certification, which cannot be done in one year since our products already have to meet other market and legislative requirements.

The proposal foresees that the Commission will provide a report four years after the entry into of the recast Directive, accompanied by a legislative proposal if appropriate. The scope will then be

[1] See Inter Institutional Agreement at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF

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amended via the ordinary legislative procedure (ex co-decision procedure) that will take, at least, one year adding up to at least five years after the entry into force of the Directive. Finally, our industry will have only one year (six years minus five years) to redesign products to comply with RoHS. Such short notice is unrealistic and unenforceable for our industries.

The time needed to develop or re-design a product is a case by case answer, since it depends on complexity of supply chains and company structures. However, we would like to illustrate this complex process with two concrete examples of design changes. It may take five to six years to redesign EEE products (the Annex provides further detailed evidence on various steps for the development of the above mentioned product and time required).

Therefore industry needs, at least, six years after the finalisation of any change in scope pursuant to an impact assessment to redesign our products and to ensure legal compliance.

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Annex: Timelines for Changes of Product Design

The following examples for design changes caused by new requirements like RoHS are real existing projects, planned or already partly completed in companies.

Example 1: Cadmium free contacts in switches

Application: Switches for appliances ("mains switch") as components mostly in consumer- and office equipment and also other appliances. The technical requirements and data are strongly differing, therefore large variety of types exist, produced in mass production or in small numbers for special applications.

Timeline:

1. Preliminary investigation regarding existing product families	12 months
2. Definition of requirements for new product families	3 months
3. Design of main parts (contacts, extinction sheets, compartment material)	6 months
4. Design of remaining parts und engineering in detail	6 months
5. Building of production tools, fabrication of samples for testing	6 months
6. Durability tests and other inspections of samples; correction of design	6 months
7. Certification, approval for appliances in potential explosive atmospheres	9 months
8. Approval of complete products with new switches	18 months
Total time to market (best case)	**5,5 years**
Total time to market if failure detected in step 6	**6 to 6,5 years**

Example 2: RoHS-conforming valve gasket in medical equipment

Application: Valve in cleaning equipment for medical applications. This example may also be representative for similar industrial equipment.

Timeline:

1. Fabrication of test samples with new gasket material	4 months
2. Thermal, electrical and mechanical tests	5 months
3. Fabrication of test discs of the new material	1 month
4. Durability tests with test discs of new material	8 months
5. Durability tests with new gasket and coating	12 months
6. Conformity assessment of complete medical equipment	6 months
Total time to market (best case)	**3 years**
Total time to market if failure detected in step 4 or 5	**4 to 6 years**

Experience has shown that in ca. 25 % of projects durability tests show failures in the new design. In these cases the design has to be revised again or alternative materials have to be checked, which needs additional time.

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