



The Secretary General

Drs P.L.B.A. van Geel,
Staatssecretaris
Ministerie van VROM
PO Box 20951
2500 EZ Den Haag
The Netherlands.

Brussels, 11 October 2004

**Proposal for a Council Decision amending directive 2002/95/EC for the purposes of establishing maximum concentration values for certain hazardous substances in electrical and electronic equipment ("RoHS")
(COM (2004) 606 final)**

Dear Mr Van Geel,

On 23 September 2004, the Commission has submitted its proposal for a Council decision amending directive 2002/95/EC on the above-mentioned subject for decision to the Council. Orgalime¹ would like to encourage the Council to take up and decide on this matter of major importance to European electrical and electronic industries by adopting the Commission's proposal without delay.

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 shall not contain lead and other specified hazardous substances. The RoHS directive also foresees that there should be maximum concentration values up to which the presence of these substances shall be tolerated.

In order to ensure compliance with these requirements, companies will need to adapt the design of their products well in advance of the 1 July 2006 deadline. It is today, *at the present time*, that companies have to design, together with their suppliers in a highly complex supply chain environment, products, which will not be allowed to contain the substances in question. Therefore, companies urgently need clarity on the levels of tolerated maximum concentration values. This will also be of utmost importance for member states to ensure proper market control.

In view of this, we would therefore like to reaffirm our support for the following levels of maximum concentration values as suggested in the submitted Commission proposal:

"For the purposes of Article 5(1)(a), a maximum concentration value of 0.1% by weight in homogeneous materials for lead, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE) and of 0.01% by weight in homogeneous materials for cadmium shall be tolerated."

¹ *Orgalime speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 23 European countries. These industries employ some 7 million people and account for 1175 billion euros of annual output, which is a quarter of the EU's output of manufactured products and a third of the manufactured exports of the European Union.*

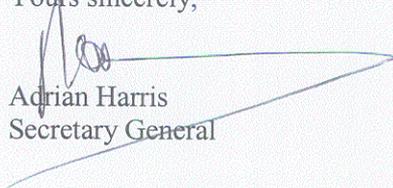
We appeal to the Council to resolve this issue as a matter of utmost priority and adopt the Commission's proposal of tolerated maximum concentration values in the interest of providing clarity for compliance and proper market control without further delay.

In addition, legal certainty e.g. for the definition of "homogenous material", as well as further guidance for the interpretation of the RoHS directive is needed very urgently. Our industry has joined forces to provide such guidance by issuing a joint RoHS industry guidance document to the Commission as well as member states representatives of the technical adaptation committee (TAC) in May 2004 and which we enclose also with this letter. The cross industry guidance document confirms industry's commitment to realize the environmental purposes of the RoHS directive and to do this in a way that is both, economically and technically feasible.

The considerable delay of the Commission and member states in providing unequivocal guidance on what maximum level of concentration values would be tolerated and in finding agreement on further guidance on the issue in the interest of both, the functioning of the internal market and market surveillance, is rendering the foreseen implementation date of 1 July 2006 challenging if not impossible to meet.

We would of course be available for further discussions on this matter with you.

Yours sincerely,



Adrian Harris
Secretary General

Annex:

Joint industry RoHS guidance document of 24 May 2004 (including Orgalime letter of 19 May 2004)

Cc.: Mr Veerman, Mr Dijkzeul and Mr Dame

AeA Europe-EICTA-ESIA-JBCE-CECED-Orgalime
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)

Executive Summary

The RoHS compliance dates (1 July 2006 and 1 January 2010) are rapidly approaching. The electrical and electronic industry¹ in Europe has launched internal RoHS-compliance programs in order to meet the deadlines and now seeks legal certainty for its working assumptions.

Industry urgently needs institutional decisions clarifying scope, technical definitions, compliance and market surveillance. These decisions are needed as soon as possible, at the latest early Autumn 2004, to ensure free movement and smooth market access of all electrical and electronic products put on the EU market.

Industry urges the Technical Adaptation Committee (TAC), as a matter of utmost priority, to:

i) decide maximum concentration limit values (MCV) ensuring that the legal text defines “homogeneous material” on the basis of the European Commission’s proposal issued during the respective stakeholder consultation²;

ii) clarify the scope of the RoHS Directive (including definitions of the existing exemptions and new exemption requests);

iii) prevent the unclear and ambiguous criteria of “intentionally/unintentionally added” from entering any technical guidance or other relevant document³;

iv) accept presumption of conformity as a method of putting a product onto the EU market, and;

v) develop a harmonised approach to market surveillance.

Should the TAC adopt the suggestion for a definition of maximum concentration limit values as proposed by the European Commission in January 2004, we recommend the terms “unit” and “mechanically disjointed” be further defined (see section 2).

The electrical and electronic industry in Europe is looking forward to cooperation with the European Commission, Members of the TAC and national market surveillance authorities.

¹See annex: Industry associations

²See Orgalime letter of 19 May 2004

³See Orgalime letter of 19 May, 2004

1. Introduction

This document provides the view of electrical and electronic industry in Europe on the outstanding technical issues of Directive 2002/95/EC on RoHS to the European Commission and the EU's Technical Adaptation Committee. The clarifications are needed to ensure that technical requirements for all “X-free” electronic and electrical products are exactly the same across the EU in order to ensure free movement of, and smooth market access for all electrical and electronic products in the EU.

The European Commission proposed the following legal definition for maximum concentration limit values in its consultation (20 November 2003) on “Amendment of Directive 2002/95/EC of the European Parliament and of the Council for the purposes of establishing the maximum concentration values for certain hazardous substances in electrical and electronic equipment”:

“A maximum concentration value of 0.1% by weight in homogenous materials for lead, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE) and of 0.01 % by weight in homogenous materials for cadmium shall be tolerated. Homogenous material means a unit that can not be mechanically disjointed in single materials.”

Co-signatories of this document, in their individual submissions to the Commission's consultation (20 November 2003), called for further guidance on technical “meaning” of the text mentioned above in order to “transpose” the legal language to technical requirements and/or specifications of “X-free” products in the EU.

All Associations agree that it is crucially important to define “homogeneous material” and to establish it together with the limit values in order to secure a consistent interpretation and surveillance across the EU. A guidance document is needed to secure this.

We strongly encourage the European Commission and the Technical Adaptation Committee (TAC) to issue a guidance document with the support of industry.

2. Clarification of Technical Definitions

The European Commission suggests that the maximum concentration limit values of the banned substances is determined at the “homogeneous material” level. The Commission defines it as a “**unit** that cannot be **mechanically disjointed** in single materials”.

Industry suggests that the term “**unit**”, as referenced by the Commission, is defined as:

- *The smallest part of an electrical or electronic equipment that can be separated from the equipment by using ordinary tools, without destroying the function of the part when it is removed.*

Industry suggests that the term “**mechanically disjointed**” is defined as:

- *Dismantling of a unit by simple processes (such as screwing, disconnecting and/or desoldering) using ordinary tools (i.e. not applying chemicals, cutting, grinding and/or polishing)*

without destroying the function of the unit.

The above mentioned definitions ensure that complete products (TV sets, mobile phones, washing machines etc.) or individual parts such as populated printed circuit boards or complete cables shall not be considered as “units”. Moreover, the definitions do not determine or influence which testing methodology should be used.

Examples of “units” are listed below. These examples⁴ illustrate the smallest possible “units” to be tested to monitor RoHS-compliance (see section 4). In other words, as per the industry's above mentioned suggestion for definition of “a unit” and “mechanically disjointed”, these are examples of smallest parts of an electrical or electronic equipment that can be separated from the equipment by using ordinary tools without destroying the function of the part, but not dismantled any further for the RoHS compliance testing purposes. Although industry aims to eliminate lead and other banned substances in electronic and electrical products at material level, testing down to the material level has its limitations. Industry therefore suggests that following parts should be considered a “unit” to be tested.

- Electronic parts are units, such as:
 - unpopulated printed circuit board
 - resistors
 - capacitors
 - diodes
 - integrated circuits
 - etc.
- Electromechanical parts are units, such as:
 - moulded connectors
 - cable insulation
 - etc.
- Mechanical parts are units, such as:
 - screws
 - housings or cabinets (with a surface treatment, e.g. plated, coated and/or painted)
 - keys (from a keyboard)
 - decorated/coated glass
 - glass-ceramic parts
 - etc.

3. Industry suggestion for TAC's priorities

It is of vital importance that market players and the EU governments share the same understanding on the scope of the Directive in order to provide legal certainty both to the industry and the enforcement authorities. Industry has provided comprehensive material regarding the definitions of the existing exemptions, suggestions for further clarifications as well as requested a few new exemptions. All exemptions listed in the Annex of the RoHS Directive should be further defined.

We therefore urge TAC, as a matter of utmost priority, to adopt a decision on the maximum concentration limit values (MCV) and clarify the scope of the RoHS Directive (including the definitions of the existing and new exemption requests).

⁴ Please note that the list of examples is non-exhaustive.

Industry would strongly oppose any guidance documents on Directive 2002/95/EC which referred to the concept of substances having been “intentionally introduced” to the product, as in the case of the End-of-life Vehicles Directive. A maximum concentration value of 0.1% by weight of lead, mercury, hexavalent chromium, PBB and PBDE, and 0.01% by weight of cadmium should always be accepted, irrespective of the substance having been intentionally introduced or not. Moreover, enforcement of such a provision would be almost impossible as testing of the presence of chemicals in electronic and electrical equipment only indicates the amount of a substance and not if a substance was or was not intentionally introduced. Consequently, it would be disproportionately burdensome and onerous for manufacturers to conclusively demonstrate that the substances had not been intentionally introduced.

4. Demonstration of compliance and harmonized approach to market surveillance

The Directive stipulates that end products placed on the EU single market need to be RoHS compliant. This means that the manufacturers of end products bear full responsibility of RoHS compliance.

In practical terms, manufacturers will require component suppliers, that supply components to the end-products, to meet the maximum concentration limit values at unit level (see section 2). Therefore, manufacturers of end-products are in a position to monitor the compliance down to the unit level. Component suppliers, in turn, will require material suppliers to provide them with necessary information that enable them to satisfy requests of end product manufacturers.

The industry associations recommend the EU authorities to accept presumption of conformity with the RoHS Directive. The authorities should not require separate manufacturer declarations as a pre-market surveillance, although manufacturers should be allowed to issue voluntary self-declarations, without an intervention of a third party.

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, and diminishes potentially onerous obligations of the national enforcement authorities. The Commission and the Member States should agree to adopt a common set of rules for market surveillance and measurement.

We strongly recommend the EU Member States to adopt a common approach to the implementation of the RoHS Directive. To guarantee legal certainty and avoid arbitrary methods being used, guidance material would be needed as soon as possible, preferably no later than early autumn 2004.



AeA Europe – American electronics association

EICTA

European Information Systems
Industry Association | Communication Technologies
Consumer Electronics

EICTA – European Industry Association for Information Systems, Communication Technologies and Consumer Electronics

EECA ESIA

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ESIA – European Semiconductor industry association



JBCE- Japan Business Council in Europe



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CECED – European Domestic Appliances Manufacturers



ORGALIME – Liaison Group of European Mechanical, Electrical, Electronic and Metalworking Industries

AeA Europe – Established in 1990 in Brussels, AeA Europe focuses on managing issues surrounding environment and regulatory standards and the impact of EU policies on transatlantic trade, investments, jobs, research, education and community affairs throughout Europe. Members employ over 500,000 people in Europe, active throughout the high technology spectrum, from software, semiconductors and computers to Internet technology, advanced electronics and telecommunications systems and services.

EICTA –, Founded in 1999 is the voice of the Information and Communications Technology and Consumer Electronics Industry in Europe. It is composed of 48 major multinational companies and 32 national associations from 24 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and EUR 200 billion in revenues.

ESIA – The European Semiconductor Industry Association (ESIA), part of the European Electronic Component manufacturers' Association (EECA), represents the European-based manufacturers of semiconductor devices. The semiconductor industry provides the enabling technology, which is at the forefront of the development of the digital economy. The sector supports over 85,000 jobs in a market currently valued at around €28.5 bn. There are around 80 production sites in Western Europe.

JBCE – Japan Business Council in Europe, founded in 1998, is the organization representing Japanese companies with significant operation in Europe. Members of JBCE, currently 49 companies, are all leading Japanese multinationals which market a wide range of products and have made significant investment including electric and electronic equipments. JBCE's key objective is to contribute to EU public policy issues in a positive way, drawing upon the experience gained in Japan and other countries and utilizing the expertise developed in specific field, such as environmental protection and technological innovation.

CECED – European Committee of Domestic Equipment Manufacturers, represents the European industry of household appliances, which employs 200,000 people directly. It represents a yearly turnover of about 35 billion euro.

Orgalime – Orgalime speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 23 European countries. These industries employ some 7 million people and account for 1175 billion euros of annual output, which is a quarter of the EU's output of manufactured products and a third of the manufactured exports of the European Union.



Decision amending directive 2002/95/EC for the purposes of establishing maximum concentration values for certain hazardous substances in electrical and electronic equipment¹

Dear Madam, dear Sir,

Orgalime understands that the Commission has requested member states to vote on the Draft decision amending directive 2002/95/EC for the purposes of establishing maximum concentration values for certain hazardous substances in electrical and electronic equipment at the occasion of the next technical adaptation committee meeting scheduled for 10 June 2004.

At this stage of the proceedings, Orgalime would like to stress the importance of taking such a decision without any further delay in accordance with the Commission's text proposal tabled during the stakeholder consultation in order to ensure legal certainty for companies. These companies are at present designing, with their suppliers, products, which are to be compliant.

We particularly highlight the necessity of ensuring the following key principles:

- Any such decision must include a **definition of “homogeneous material”** in order to promote an as harmonised as possible a transposition into national law across Europe. Otherwise, the decision would leave open room for interpretation, which would lead to distortion in the internal market and therefore inevitably impact the competitiveness of European industries.
- We strongly believe that ambiguous and unclear criteria, such as **“impurities that are unintentionally/intentionally added”** cannot provide clear and justified guidance to such a decision for industry and should therefore be rejected. Such a criterion would not only be difficult to prove but even impossible to apply. It would therefore bear an unacceptable risk for our industry. Moreover, experiences from the End-of-Life-Vehicles-Directive have shown the unsuitability of any reference to “intentionally/ unintentionally added” in the context of technical interpretation of maximum concentration values.

Orgalime urges regulators to consider carefully these ideas when taking this decision. Both, the manufacturing chain and market surveillance authorities, to our mind, need clarity to provide for compliance and proper market control. In order to provide technical guidance on this issue of vital importance, industry has been joining forces and has elaborated commonly accepted elements for an additional guidance document, which shall be submitted to you shortly.

We would of course be available for further discussions on this matter with you.

Yours sincerely,

Adrian Harris
Secretary general
(electronically signed)
Brussels, 19 May 2004

¹ **This letter is supported by AQUA, CECED, CITEF and FACOGAZ.**