



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 December 2009

17433/09

**Interinstitutional File:
2008/0240 (COD)**

**ENV 890
MI 464
CODEC 1445**

NOTE

from : Presidency

to : Delegations

No. prev. doc. : 17262/09 ENV 876 MI 461 CODEC 1425

No. Cion prop. : 17333/08 ENV 1019 MI 553 CODEC 1859 - COM(2008) 809 final

Subject : Proposal for a Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (**RoHS**) - (recast)
- Information from the Presidency

I. INTRODUCTION

On 16 December 2008 the European Commission submitted the proposal for a recast of Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) to the European Parliament and the Council. A proposed recast was necessary, according to the Commission, because of uncertainties about the scope, lack of clarity on legal provisions and definitions as well as disparities in Member States' approaches to product compliance and potential duplication of procedure with other pieces of EU legislation such as REACH which generate unnecessary administrative costs. In particular:

- to harmonise the scope (Article 2), two new Annexes are added, the first describing the broad product categories to be covered and the second providing a binding product lists within each category. Medical devices and control and monitoring instruments are included in the scope in a staged manner to avoid adverse socio-economic impacts.
- to enhance complementarity and coherence with other relevant EU legislation it is proposed to align the RoHS Directive to related legislation such as the "Marketing of Products Package" ¹ (regarding definitions and enforcement), REACH ² (regarding the use of substances), the EuP Directive ³ (regarding the design of electrical and electronic equipment (EEE)) and the Waste Framework Directive ⁴ (regarding management of waste).
- to ensure coherence and maximise synergy with the work carried out under the chemicals' legislation a mechanism for introducing new substance bans in line with the REACH methodology is inserted (Article 4). Detailed rules of this process are to be developed through comitology.
- to stimulate substitution efforts, provide legal security and shift the burden of proof to the applicant, new criteria such as availability and reliability for granting exemptions are introduced (Article 5) and a 4-year maximum validity period for the exemptions is set. Detailed rules for the applicants to apply when requesting an exemption are to be developed through comitology.

The position of the European Parliament in first reading is not expected before May 2010.

¹ Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82) and Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

² OJ L 396, 30.12. 2006, p. 1.

³ OJ L 191, 22.7.2005, p. 29.

⁴ OJ L 312, 22.11.2008, p. 3.

On 21 October 2009, the Council held a policy debate on the proposal.

The Working Party on the Environment discussed the recast proposals on several occasions. A Presidency compromise text, prepared following these discussions, can be found in the *Addendum to this note*. The latest state of play is summarized in Sections II to IV below.

All delegations have a general scrutiny reservation on the latest Presidency text.
MT/DK have a parliamentary scrutiny reservation.

II. KEY OUTSTANDING ISSUES

1) **Scope of the Directive - Article 2 paragraphs 1 and 3**

a) EEE included in the scope

Following the request of a majority of delegations for an open scope, the Presidency has proposed to move back the two Annexes (IA and IB) related to the scope in the proposed recast of the WEEE Directive and to enlarge its scope to all EEE.

In this respect:

Four delegations do not support an open scope and support the Commission on this point, which maintains its original proposal whereby the scope would be defined by making references to the Annexes (comprising ten main EEE categories).

Five delegations suggest specifying that cables, consumables and accessories are included in the scope. While three delegations could agree with the inclusion of cables and consumables, other delegations have a reservation on these suggestions.

b) Exclusions

The Presidency compromise maintains the exclusions virtually unchanged from the Commission proposal.

Nine delegations request the exclusion of "fixed installations", considering this would be a clarification of the current practice while other delegations do not support this addition and suggest to better define the current exclusion of "large scale fixed industrial installation". A number of other exclusions have been suggested such as the re-use of whole parts of EEE in new equipment, photo-voltaic panels and transport equipment. They are still to be examined by the Member States.

c) Definitions connected with the scope

A number of suggestions to modify the definition of "electric and electronic equipment", as well as to insert new definitions (among others "fixed installation", "large scale stationary industrial tools", "consumables", "accessories") in Article 3 are being examined by the Working Party.

While all suggestions are aiming at clarifying the scope of the Directive in the text itself to improve legal certainty, some of these suggestions seek to maintain the approach currently applied by the Commission in its Frequently Asked Question document (FAQ - published on the Commission's website) while other suggestions aim at modifying this approach.

2) **List of banned substances - Article 4 and Annexes III and IV**

In the current RoHS Directive the list of banned substances may not be modified via comitology. In its proposal, the Commission envisages to agree on a RoHS methodology (comitology) - to be developed along the lines of the REACH methodology - which will be used to amend the list of banned substances (in Annex IV). Annex III of the Commission proposal lists four substances to be examined as a priority with the new RoHS methodology. While a majority of delegations can agree with this approach in principle, many doubts were raised on the links and the possible overlap with REACH. The Presidency compromise adds more details in the body of the Directive on the envisaged RoHS methodology and the complementarity with REACH, while making reference to the four priority substances in a recital (instead of Annex III which, once the substances examined, would serve no further purposes).

In this respect, among others:

Several delegations, while agreeing with the principle of a new RoHS methodology, consider that most of its details should be agreed in co-decision;

Some delegations consider that the new ROHS methodology should be more aligned to the REACH methodology, although focussing on waste-related aspects.

Four delegations prefer to maintain the list of priority substances in Annex III and one delegation considers that such substances should be added to Annex IV

Two delegations consider that ECHA should be involved in the assessment of substances to be placed in Annex IV.

3) **Exemptions to the ban - Articles 5, 5a and 6; Annexes V and VI**

The Presidency has, in its compromise, clarified certain aspects of the Commission proposal, namely as regards the link with REACH, the conditions applicable when evaluating an exemption to the ban (Article 5(1)) and the applicable procedure (Article 5a (new)). In this respect:

Some delegations have a reservation to the proposed wording with reference to socio-economic criteria;

Other delegations question the maximum 4 year validity period of the exemptions and two delegations ask to foresee transitional measures in case of non renewal;

Some delegations ask to be more specific on the procedure for requesting an exemption. as regards the deadlines for examination and approval of applications.

III. OTHER ISSUES

Several delegations have a reservation on Article 1 (subject matter) considering that protection of the environment should be added to the main objectives of the Directive.

One delegation requests to add, in Article 7, an obligation to produce the instructions for EEE in a language which can be easily understood by the consumers.

One delegation has a reservation on Article 12 and one other delegation has a reservation on Articles 14-16 related to CE marking.

Three delegations suggest including into Article 16 on presumption of conformity of EEE also the assessment of materials and components.

IV. AGREED PROVISIONS

There is a broad agreement on the following provisions:

Articles: 7, 8, 9, 10, 11, 12, 13, 17, 19 to 23; Annex: VI and VII.

Discussion of the recitals will take place once there is broad agreement on the content of the body of the act. In addition, Annex IX (correlation table) will have to be updated to reflect the changes in the legal text.