Electrical and electronic equipment: restriction of the use of certain hazardous substances. Recast

2008/0240(COD) - 03/12/2008 - Legislative proposal

PURPOSE: to clarify Directive 2002/95/EC restricting the use of certain hazardous substances in electrical and electronic equipment (RoHS Directive), in order to simplify its implementation, improve its application at national level, adapt it to scientific and technical progress and ensure that it is coherent with other legal texts of the Commission.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: uncertainty about the scope of the Directive, 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, generate unnecessary administrative costs. If the RoHS Directive is not reviewed, environmental benefits reaped from the legislation will remain sub-optimal. Uncertainty among manufacturers about legal requirements for demonstrating compliance with the RoHS Directive and about enforcement methodologies in the 27 Member States will persist, maintaining or increasing administrative burden.

The RoHS recast will enhance its complementarity and coherence with other relevant Community legislation, such as the "Marketing of Products Package" (regarding definitions and enforcement), REACH (regarding the use of substances), the Energy-using Products (EuP) Directive regarding the design of electrical and electronic equipment (EEE), and legislation related to management of waste from EEE. The aim is to reduce the administrative burden and make the RoHS Directive more cost effective.

CONTENT: the basic objectives and mechanisms of this Directive have not been changed. The ultimate aim is the elimination of certain hazardous substances from electrical and electronic equipment; where this is temporarily not possible, exemptions are granted. No new substances are proposed to be banned. The main proposed modifications are as follows:

Harmonisation of the scope: two new annexes describing the Directive’s scope are added, the first describing the broad product categories and the second, amendable by the Commission, providing binding product lists within each category. Medical devices and control and monitoring instruments are included to reap the environmental and health benefits from the reduction of use of hazardous substances in such equipment, but in a gradual manner so that adverse socioeconomic impacts are avoided.

Definitions: the definitions for economic operators are aligned to the "Marketing of products" package and new definitions, such as for "medical devices" and "homogeneous material" are added. Harmonised definitions, coherent with related Community legislation, enhance legal clarity and reduce administrative cost.

Substance ban: maximum concentration values for the banned substances are set (incorporation in the Directive of a Commission Decision) and permission to use non-compliant spare parts is extended to equipment benefiting from an exemption when placed on the market, to prevent premature withdrawal of equipment from use. A new annex with exemptions specific to the new product categories (medical devices and control and monitoring instruments) is added for cases where substitution is currently not feasible. A mechanism for introducing new substance bans in line with the REACH methodology is inserted to ensure coherence and maximise synergy with the work carried out under the chemicals' legislation. Detailed rules of this process will be developed through comitology. When developing these

detailed rules, the Commission will give priority to using the expertise available at the European Chemicals Agency (ECHA). The Commission will invite ECHA to evaluate the substances concerned as a priority.

Exemptions mechanism: a 4-year maximum validity period for the exemptions is set to stimulate substitution efforts, provide legal security and shift the burden of proof to the applicant, in line with REACH. New criteria such as availability and reliability for granting exemptions are introduced to take into account broader socio-economic aspects. A mandate is given to the Commission for establishing detailed rules for the applicants to apply when requesting an exemption for facilitating them and speeding up the scrutiny process.

Evaluation of product conformity and market surveillance mechanisms: new provisions introduce product conformity assessment requirements and market surveillance mechanisms in line with the "Marketing of products" package. Reducing the number of non-compliant products through strengthened and harmonised market surveillance is a cost effective way of increasing the environmental benefit of the Directive. Harmonised conformity assessment requirements increase legal certainty and reduce the administrative cost for Member States and manufacturers.