

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

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The presidency presented a **note on progress** with the proposed recast of the directive restricting the use of certain hazardous substances in electrical and electronic equipment (EEE).

The key outstanding issues are as follows:

## 1) Scope

**a) EEE included in the scope:** following the Council's policy debate in 2009 and the change to an enlarged (open) scope:

- four delegations and the Commission maintain a reservation on this point, preferring the original proposal where the scope is defined by a reference to the Annexes (enumerating the main EEE categories covered);
- three delegations suggest specifying that cables, consumables and accessories are included in the scope while other delegations have a reservation on these suggestions.

**b) Exclusions:** the Presidency has proposed new wording for some exclusions in order to accommodate the requests of delegations notably in relation to large scale industrial stationary tools, large scale industrial fixed installations, motor driven transport equipment and non-road mobile machinery. While these proposals are generally welcomed, their precise wording is still being discussed, as well as additional suggestions made by delegations notably in relation to means of transport and equipment for the generation of renewable energies;

**c) Definitions connected with the scope:** a number of new definitions were added in Article 3 by the Presidency, clarifying the definition of "electrical and electronic equipment", and in connection to "large scale industrial stationary tools", "large scale industrial fixed installations" and "spare parts". They are still being examined by the Working Party, together with a number of changes suggested by the delegations.

**2) List of banned substances - Articles 4 and 6a, 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.

The Spanish Presidency further developed the approach of the Swedish Presidency. A new Article 6a is now devoted to the review of Annex IV and contains several criteria on which the review and amendment of this Annex should take place, while ensuring coherence with REACH. In this respect, among others:

- some delegations, while agreeing with the content of this Article, have a reservation on the use of delegated acts to amend Annex IV;
- seven delegations prefer to move the list of priority substances (Annex III) to a recital while three other delegations consider that such substances should be added to Annex IV at this stage;
- three delegations suggest adding more substances in Annex III. The Presidency has maintained the Commission's proposal on this point, which will probably continue to be a relevant one, also in the context of future negotiations with the European Parliament.

**3) Exemptions to the ban - Articles 5 and 19a, Annexes V, VI and VIa:** the Presidency has, in its compromise, specified certain aspects of the Commission proposal, namely concerning the application procedure for new exemptions and for renewing existing exemptions (Article 5 paragraphs 2a-2c and Annex VIa). The maximum validity period of the exemptions has been prolonged from four years to six years. A new Article 19a (transitional measures) is added for EEE not covered by the present RoHS Directive and which will fall within the open scope of the recasted Directive.

In this respect:

- some delegations have a reservation to the proposed wording with reference to socioeconomic criteria and availability and reliability of substitutes;
- other delegations are not satisfied with the maximum 6 year validity period of the exemptions;
- two delegations ask to specify a deadline for the Commission to examine and take a decision on new applications for exemptions.

**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;
- some delegations request to revise Articles 7 to 13, related to enforcement and inspired by the "Marketing of Products Package", in order to improve consistency with other requirements of the Directive;
- one delegation has a reservation on Articles 14-16 related to CE marking;
- lastly, some adjustments to the procedural provisions have been introduced in the text in order to comply with Article 290 of the Lisbon Treaty (delegated acts). These adjustments have not yet been examined in detail by the (Environment) Working Party.