Basic information

2008/0240(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Electrical and electronic equipment: restriction of the use of certain hazardous substances. Recast Repealing Directive 2002/95/EC 2000/0159(COD) Amended by 2017/0013(COD) Amended by 2023/0454(COD) **Subject** 3.40.06 Electronics, electrotechnical industries, ICT, robotics 3.70.13 Dangerous substances, toxic and radioactive wastes (storage, transport)	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ENVI Environment, Public Health and Food Safety	EVANS Jill (Verts/ALE)	31/08/2009

Former committee responsible	Former rapporteur	Appointed
ENVI Environment, Public Health and Food Safety		

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	GERINGER DE OEDENBERG Lidia Joanna (S&D)	02/09/2009

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs		

Council of the European Union

Council configuration	Meetings	Date
Transport, Telecommunications and Energy	3093	2011-05-27
Environment	2968	2009-10-21
Environment	3021	2010-06-11
Environment	2928	2009-03-02

	Environment	2988	2009-12-22

European Commission

Commission DG	Commissioner
Environment	POTOČNIK Janez

Key events

Date	Event	Reference	Summary
03/12/2008	Legislative proposal published	COM(2008)0809	Summary
02/03/2009	Debate in Council		
12/03/2009	Committee referral announced in Parliament, 1st reading		
19/10/2009	Resumption of business from the previous parliamentary term		
21/10/2009	Debate in Council		Summary
22/12/2009	Debate in Council		Summary
02/06/2010	Vote in committee, 1st reading		Summary
11/06/2010	Debate in Council		Summary
15/06/2010	Committee report tabled for plenary, 1st reading	A7-0196/2010	
22/11/2010	Debate in Parliament		
24/11/2010	Decision by Parliament, 1st reading	T7-0431/2010	Summary
24/11/2010	Results of vote in Parliament		
27/05/2011	Act adopted by Council after Parliament's 1st reading		
08/06/2011	Final act signed		
08/06/2011	End of procedure in Parliament		
01/07/2011	Final act published in Official Journal		

Technical information

Procedure reference	2008/0240(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 2002/95/EC 2000/0159(COD) Amended by 2017/0013(COD) Amended by 2023/0454(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed

Committee dossier	ENVI/7/00135

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE430.424	14/12/2009	
Amendments tabled in committee		PE439.865	19/03/2010	
Amendments tabled in committee		PE439.897	19/03/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0196/2010	15/06/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0431/2010	24/11/2010	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00062/2010/LEX	08/06/2011	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0809	03/12/2008	Summary
Document attached to the procedure	SEC(2008)2930	03/12/2008	
Document attached to the procedure	SEC(2008)2931	03/12/2008	
Commission response to text adopted in plenary	SP(2011)610	26/01/2011	
Follow-up document	COM(2016)0215	18/04/2016	
Follow-up document	COM(2021)0641	20/10/2021	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1032/2009	10/06/2009	
CofR	Committee of the Regions: opinion	CDR0217/2009	04/12/2009	

Additional information

Source	Document	Date

National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Corrigendum to final act 32011L0065R(02) OJ L 044 14.02.2014, p. 0055	Summary
Directive 2011/0065 OJ L 174 01.07.2011, p. 0088	Summary
Corrigendum to final act 32011L0065R(01) OJ L 209 04.08.2012, p. 0018	Summary

Delegated acts

Reference	Subject
2016/2671(DEA)	Examination of delegated act
2016/2672(DEA)	Examination of delegated act
2013/2769(DEA)	Examination of delegated act
2013/2770(DEA)	Examination of delegated act
2013/2918(DEA)	Examination of delegated act
2013/2917(DEA)	Examination of delegated act
2013/2914(DEA)	Examination of delegated act
2013/2913(DEA)	Examination of delegated act
2013/2912(DEA)	Examination of delegated act
2013/2911(DEA)	Examination of delegated act
2013/2910(DEA)	Examination of delegated act
2013/2909(DEA)	Examination of delegated act
2013/2908(DEA)	Examination of delegated act
2013/2907(DEA)	Examination of delegated act
2013/2906(DEA)	Examination of delegated act
2013/2905(DEA)	Examination of delegated act
2013/2904(DEA)	Examination of delegated act
2013/2903(DEA)	Examination of delegated act
2013/2902(DEA)	Examination of delegated act
2013/2901(DEA)	Examination of delegated act
2014/2671(DEA)	Examination of delegated act
2014/2677(DEA)	Examination of delegated act
2014/2683(DEA)	Examination of delegated act
2014/2684(DEA)	Examination of delegated act
2014/2685(DEA)	Examination of delegated act

2014/2687(DEA)	Examination of delegated act
2014/2678(DEA)	Examination of delegated act
2014/2686(DEA)	Examination of delegated act
2015/2542(DEA)	Examination of delegated act
2015/2544(DEA)	Examination of delegated act
2015/2546(DEA)	Examination of delegated act
2016/2577(DEA)	Examination of delegated act
2015/2646(DEA)	Examination of delegated act
2017/2609(DEA)	Examination of delegated act
2017/2807(DEA)	Examination of delegated act
2018/2943(DEA)	Examination of delegated act
2018/2951(DEA)	Examination of delegated act
2019/3009(DEA)	Examination of delegated act
2019/3004(DEA)	Examination of delegated act
2018/2945(DEA)	Examination of delegated act
2019/3012(DEA)	Examination of delegated act
2019/2999(DEA)	Examination of delegated act
2019/3017(DEA)	Examination of delegated act
2017/2613(DEA)	Examination of delegated act
2017/2615(DEA)	Examination of delegated act
2018/2946(DEA)	Examination of delegated act
2018/2947(DEA)	Examination of delegated act
2018/2948(DEA)	Examination of delegated act
2018/2949(DEA)	Examination of delegated act
2018/2950(DEA)	Examination of delegated act
2018/2952(DEA)	Examination of delegated act
2018/2611(DEA)	Examination of delegated act
2018/2604(DEA)	Examination of delegated act
2018/2606(DEA)	Examination of delegated act
2018/2607(DEA)	Examination of delegated act
2018/2612(DEA)	Examination of delegated act
2018/2613(DEA)	Examination of delegated act
2018/2615(DEA)	Examination of delegated act
2018/2944(DEA)	Examination of delegated act
2019/2793(DEA)	Examination of delegated act
2019/2792(DEA)	Examination of delegated act
2021/3030(DEA)	Examination of delegated act
2021/3033(DEA)	Examination of delegated act
2021/3041(DEA)	Examination of delegated act

2021/3038(DEA)	Examination of delegated act
2021/3032(DEA)	Examination of delegated act
2021/3034(DEA)	Examination of delegated act
2021/2514(DEA)	Examination of delegated act
2021/2860(DEA)	Examination of delegated act
2021/2859(DEA)	Examination of delegated act
2021/2591(DEA)	Examination of delegated act
2021/3036(DEA)	Examination of delegated act
2021/3031(DEA)	Examination of delegated act
2021/3035(DEA)	Examination of delegated act
2021/3039(DEA)	Examination of delegated act
2021/3040(DEA)	Examination of delegated act
2021/2861(DEA)	Examination of delegated act
2021/3051(DEA)	Examination of delegated act
2022/2682(DEA)	Examination of delegated act
2023/2711(DEA)	Examination of delegated act
2022/2683(DEA)	Examination of delegated act
2023/2943(DEA)	Examination of delegated act
2022/2918(DEA)	Examination of delegated act
2023/2699(DEA)	Examination of delegated act

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

2008/0240(COD) - 22/12/2009

The presidency informed the Council regarding **progress in the discussions** on a draft directive on waste electrical and electronic equipment as well as on the proposed directive on the restriction of the use of hazardous substances in electrical and electronic equipment.

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

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

A **Presidency compromise text**, prepared following these discussions, dealt with the following salient issues.

Scope of the Directive:

- **WEEE included in the scope**: the Presidency compromise re-introduces in the Directive two Annexes (IA and IB) related to the scope, as in the WEEE Directive presently enforced. Both Annexes are simplified and the waste categories are reduced from 10 to 5;
- **Exclusions**: the Presidency compromise maintains the exclusions virtually unchanged from the Commission proposal.

Separate collection target: the proposed target for separate collection of WEEE set at 65% (total weight of WEEE collected in a given year expressed as a percentage of the average weight of EEE placed on the market on the three preceding years) to be achieved annually from 2016 is questioned by a great majority of delegations.

Role and definition of producer: at the request of all delegations and following several months of discussions the Presidency decided to re-introduce the current meaning of the definition of producer (at national level) and to further clarify this definition along the lines of the definition of producer agreed in the Batteries Directive.

Financial responsibility and ownership of the waste: following the remarks of several delegations on the practical difficulties raised by the proposal, the Presidency has introduced clarifications on this issue.

Register of producers: the inter-operational registers proposed by the Commission in Article 16 were criticised by all the delegations. The Presidency, as a consequence, presented a compromise text on Article 16 accompanied by a new Article 16a on administrative cooperation and exchange of information.

Definition of producers: several delegations propose to strengthen the definition in order to allow for a better enforcement of the financial obligation for collection and recovery in each Member States.

Recovery targets: pending an agreement on the scope and the Annexes (IA and IB) establishing the product categories, the recovery targets are still subject to scrutiny by many delegations. Four delegations have a reservation on the proposed 5% increase of these targets.

Information for users: four delegations object to the provision allowing producers to show the cost for management of WEEE to purchasers.

All delegations have a **general scrutiny reservation** on the latest Presidency text. Malta has a parliamentary scrutiny reservation.

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

2008/0240(COD) - 08/06/2011 - Final act

PURPOSE: to strengthen the rules on the use of hazardous substances in electrical and electronic equipment (EEE)in order to contribute to the protection of human health and the environmentally sound recovery and disposal of waste EEE.

LEGISLATIVE ACT: Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

CONTENT: following an agreement in first reading with the European Parliament, the Council adopted a Directive recasting 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment. This **will extend protection from dangerous chemicals to more electrical appliances** and improve the safety of products such as mobile phones, refrigerators and electronic toys.

Scope: in the revised legislation: the ban on the use of six dangerous substances (amongst them lead, mercury, and cadmium) in electrical and electronic equipment is extended to more products, while harmonising it across the EU: in principle the ban will now apply to all electrical and electronic equipment as well as to **cables and spare parts**. Certain **transitional periods** are provided for: three years (22 July 2014) for monitoring and control devices and medical devices; five years (22 July 2016) for in vitro medical devices and six years (22 July 2017) for industrial control appliances.

In order to attain the EU's ambitious targets for renewable energy and energy efficiency, photovoltaic panels to produce energy from solar light **do not have to comply with the restriction**. Energy-saving light bulbs are also temporarily exempted from the Directive.

Adaptation of the Annexes to scientific and technical progress: the Directive ensures that the measures are kept under review and, if necessary, adjusted to take account of available technical and scientific information.

The annexes to the Directive will be reviewed periodically to take into account of Regulation (EC) No 1907/2006 (REACH). In particular, the risks to human health and the environment arising from the use of Hexabromocyclododecane (HBCDD), Bis (2- ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP) and Dibutyl phthalate (DBP) must be considered as a priority.

Measures adopted in this context shall, for categories 1 to 7, 10 and 11 of Annex I, have a validity period of up to 5 years and, for categories 8 and 9 of Annex I, a validity period of up to 7 years. The validity periods are to be decided on a case-by-case basis and may be renewed. An application for renewal of an exemption shall be made no later than 18 months before the exemption expires. In order to ensure uniform conditions for the implementation of the Directive, the Commission shall adopt a harmonised format for applications as well as comprehensive guidelines for such applications, taking into account the situation of SMEs.

Review and amendment of the list of restricted substances in Annex II : as soon as scientific evidence is available, and taking into account the precautionary principle, it will be necessary to examine the restriction of other hazardous substances, including any substances of very small size or with a very small internal or surface structure **(nanomaterials)** which may be hazardous due to properties relating to their size or structure, and their substitution by more environmentally friendly alternatives which ensure at least the same level of protection of consumers.

CE marking: the conformity marking applicable for products at Union level, CE marking, will also apply to EEE that is subject to the Directive. In the absence of evidence to the contrary, Member States shall presume EEE bearing the CE marking to comply with Directive.

Review: no later than 22 July 2014 the Commission shall examine the need to amend the scope of this Directive in respect of the EEE concerned, and shall present a report accompanied by a legislative proposal, if appropriate, with respect to any additional exclusions related to that EEE. No later than 22 July 2021 the Commission shall carry out a general review of the Directive, and shall present a report accompanied, if appropriate, by a legislative proposal.

ENTRY INTO FORCE: 21/07/2011.

TRANSPOSITION: 02/01/2013.

DELEGATED ACTS: the Commission is empowered to adopt delegated acts in respect of amendments to Annex II, detailed rules for complying with maximum concentration values, and the adaptation of Annexes III and IV (exemptions) to technical and scientific progress. The power to adopt the

delegated acts is conferred on the Commission for a period of 5 years from 21 July 2011. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it. The European Parliament or the Council may object to a delegated act within a period of 2 months from the date of notification (which period may be extended for 2 months.) If the European Parliament or the Council objects to the delegated act, it shall not enter into force.

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

2008/0240(COD) - 11/06/2010

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.

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

2008/0240(COD) - 21/10/2009

The Council held a **policy debate** on the proposed recast of two directives concerning electrical and electronic equipment: the WEEE Directive, promoting recycling and recovery of electrical and electronic waste, and the RoHS Directive, intended to eliminate as far as possible the use of hazardous substances in such equipment.

Ministers were invited to discuss the scopes of both directives. A majority of delegations supported the idea that the two directives, WEEE and RoHS, could have separate scopes that take account of their different legal bases and objectives. The Commission, on the other hand, underlined that its proposal to maintain the same scopes for both directives and to harmonise them across the EU was intended to improve their implementation and increase legal certainty.

In addition, there was broad support for widening the scope of the RoHS Directive for including all electrical and electronic equipment unless explicitly excluded. Some delegations, however, did not agree and pointed out that the costs of this option for producers were unclear and would need to be the subject of an impact assessment.

Concerning the scope of the WEEE Directive, some ministers pleaded for defining its scope through a minimum list of covered equipment as in the existing legislation. Others were supportive of an open scope that would in principle include all electrical and electronic equipment, like in the case of RoHS, pointing out that this would increase environmental protection.

Ministers' views will guide further work on the two proposals in the months to come.

It is recalled that the WEEE Directive requires Member States to collect waste electrical and electronic equipment separately and establishes targets for its recovery and recycling. The Directive, already implementing the principle of producer responsibility, obliges EU countries to collect annually an average of at least 4kg of electrical and electronic waste per inhabitant.

The RoHS Directive is intended to eliminate as far as possible the use of hazardous substances in electrical and electronic equipment. It prohibits the use of lead, mercury, cadmium, hexavalent chromium as well as certain brominated flame retardants. As it is not always possible to abandon completely these substances, the Directive also provides for a number of applications to be exempted from the ban.

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

2008/0240(COD) - 24/11/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 640 votes to 3, with 12 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances (RoHS) in electrical and electronic equipment (recast).

Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission’s proposal as follows:

Purpose and scope: according to the compromise text, the Directive should contribute to **protection of human health and the environment**, as well as the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Member States shall provide that electrical and electronic equipment that was outside the scope of Directive 2002/95/EC, but which would be in non-compliance with this Directive, may nevertheless continue to be made available on the market until eight years after the entry into force of the Directive.

In addition, the Directive does not apply to:

- equipment which is necessary for the protection of the essential interests of the security of Member States, including arms, munitions and war material intended for specifically military purposes;
- equipment designed to be sent into space;
- equipment which is specifically designed and to be installed as part of another type of equipment that is excluded or does not fall within the scope of this Directive, which can fulfil its function only if it is part of that equipment, and which can be replaced only by the same specifically designed equipment;
- large-scale stationary industrial tools;
- large-scale fixed installations;
- means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved;
- non-road mobile machinery made available exclusively for professional use;
- active implantable medical devices;
- photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location to produce energy from solar light for public, commercial, industrial and residential applications;
- equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

Definitions: a number of definitions should be included in this Directive in order to specify its scope. In addition, the definition of ‘electrical and electronic equipment’ should be complemented by a definition of ‘dependent’, to cover the multipurpose character of certain products, where the intended functions of electrical and electronic equipment are to be determined on the basis of objective characteristics, such as the design of the product and its marketing.

Prevention: Member States shall ensure that EEE placed on the market, including cables and spare parts for its repair, its reuse, updating of its functionalities or upgrading of its capacity, does not contain the substances listed in Annex II.

This provision shall not apply to the re-use of spare parts recovered from EEE put on the market before 1 July 2006 in equipment placed on the market before 1 July 2016, under the condition that re-use takes place in auditable closed-loop business-to-business return systems, and that re-use of parts is notified to the consumer.

Adaptation to the REACH Regulation: for the purposes of adapting Annexes III and IV to scientific and technical progress, the Commission shall adopt measures such as the inclusion of materials and components of EEE for specific applications in Annexes III and IV on exemptions if such inclusion does not weaken the environmental and health protection of Regulation (EC) No 1907/2006 (REACH) and where any of the following conditions is fulfilled. In particular, the risks to human health and the environment arising from the use of Hexabromocyclododecane (HBCDD), Bis (2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP) and Dibutylphthalate (DBP) should be considered as a priority.

The decision on the inclusion of materials and components of EEE in Annexes III and IV on exemptions and the length of possible exemptions shall take into account the availability of substitutes and the socio-economic impact of substitution. Decisions on the length of possible exemptions shall take into account any potential adverse impacts on innovation.

Measures adopted for categories 1 to 7, 10 and 11 of Annex I, have a validity period of up to five years and, for categories 8 and 9 of Annex I, a validity period of up to seven years, to be decided on a case-by-case basis and which can be renewed.

An application for renewal shall be made no later than 18 months before an exemption expires. The Commission shall decide on an application for renewal no later than 6 months before the expiry date of the existing exemption unless specific circumstances justify other deadlines. The existing exemption shall in any case remain valid until a decision on the renewal application is taken by the Commission.

In the event that the application for renewal is rejected or that an exemption is deleted, there shall be a minimum period of 12 months and maximum period of 18 months from the date the decision is taken before the exemption expires.

In order to ensure uniform conditions of implementation, the Commission, in accordance with the procedure referred to in Article 19(2), shall adopt a harmonised format for applications pursuant to paragraph 3 as well as comprehensive guidance for such applications, taking into account the situation of SMEs.

Review and amendment of the list of restricted substances in Annex II: as soon as scientific evidence is available, and taking into account the precautionary principle, the restriction of other hazardous substances, including any substances of very small size or internal or surface structure (nanomaterials) which may be hazardous due to properties relating to their size or structure, and their substitution by more environmentally friendly alternatives which ensure at least the same level of protection of consumers should be examined

To this end, the review and amendment of the list of restricted substances in Annex II should be coherent, should maximise synergies with, and should reflect the complementary nature of the work carried out under other Union legislation, and in particular under Regulation (EC) No 1907/2006 while ensuring the mutually independent functioning of this Directive and that Regulation . Consultation with the relevant stakeholders should be carried out and specific account should be taken of the potential impact on SMEs.

Obligations of distributors: Member States shall ensure that when making an EEE available on the market, distributors act with due care in relation to the requirements applicable in particular by verifying that the EEE bears the CE marking, that it is accompanied by the required documents in a language which can be easily understood by consumers and other end-users in the Member State in which the EEE is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in this Directive.

Presumption of conformity: in the absence of evidence to the contrary, Member States shall presume electrical and electronic equipment bearing the CE marking as conforming to this Directive.

Materials, components and EEE on which tests and measurements demonstrating compliance with the requirements of this Directive have been performed, or which have been assessed, in accordance with harmonised standards, the references of which have been published in the Official Journal of the European Union, shall be presumed to comply with the requirements of this Directive.

Comitology: there is a need for uniform conditions for implementing this Directive, particularly with regard to the guidelines and format of applications for exemptions.

According to Article 291 of the Treaty on the Functioning of the European Union (TFEU), rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

Delegated acts: the Commission should be empowered to adopt delegated acts in respect of amendments to Annex II, detailed rules for complying with maximum concentration values, and the adaptation to technical and scientific progress of Annexes III and IV.

Review: no later than three years following the entry into force of the Directive, the Commission shall examine the need to amend the scope of this Directive in respect of the EEE concerned, and shall present a report thereon to the European Parliament and the Council accompanied by a legislative proposal, if appropriate, with respect to any additional exclusions related to that EEE.

No later than ten years following the entry into force of the Directive, the Commission shall carry out a general review of this Directive, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.

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.

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

2008/0240(COD) - 08/06/2011 - Corrigendum to final act

Corrigendum to Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment

(Official Journal of the European Union L 174 of 1 July 2011)

On page 95, at the end of Article 9(b),

for:

‘... and that the manufacturer has complied with the requirements set out in points (f) and (g) of Article 7;',

read:

‘... and that the manufacturer has complied with the requirements set out in points (g) and (h) of Article 7;'.

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

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n/a