



13 February 2008

Dear Madam/Sir,

The Japan Business Council in Europe, (JBCE) is the organization representing Japanese companies with significant operations in Europe. Our members are among the leading multinational corporations in the world.

Attached you find our response to the second consultation on "The review of Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment" - Invitation for Comments on Policy and for Information Supply.

We are more than willing to make additional contributions and answer any questions that may arise from our response or on any other related subject.

Sincerely Yours,

Lars Brückner
Chairman, Environment Committee
Japan Business Council in Europe

JBCE response to the Commission Consultation on Policy Options for a Revised ROHS Directive

Options for the RoHS review

I. PRODUCT GROUPS TO BE INCLUDED [ARTICLE 6 OF ROHS]

(page and table numbers refer to the ERA report:

http://ec.europa.eu/environment/waste/wEEE/pdf/era_study_final_report.pdf)

1. Continue excluding one or both categories altogether

2. Continue excluding one or both categories altogether and encourage eco-design

3. Include them both from the beginning (probably around 2012 taking into account time necessary for co-decision and accomplishing transposition of revised RoHS in all MS)

4. Include both categories but with a deferred deadline (e.g. 2014)

5. Include both from the beginning with the exemptions proposed by ERA (tables 71&72: depending on the adoption date, table 72 exemptions may be redundant)

>>> JBCE supports this option

Relevant JBCE member companies have already started applying lead free soldering and the development of an alternative technology. However, as ERA mentioned in their report, equipment which belongs to categories 8 & 9 has a lot of unique characters* which makes it differs significantly from equipment belonging to other categories. * Unique characteristics of categories 8 & 9 products

- 1. Contributing to the human health, safety, environmental protection, and the progress of science and technologies***
- 2. High requirement for reliability, accuracy, and safety***
- 3. Long product life [10-20 years]***
- 4. Various specific components by custom design***
- 5. Low volume and wide range of applications***

We support the arguments of ERA report concerning the future development of new life saving technology. We do not intentionally use hazardous substances but sometimes physics and chemistry dictate that only one material has the required properties (e.g. Sensor, Detector and Electrode). The exemptions listed in tables 71 and 72 are absolutely necessary, when Categories 8 and 9 are included in the scope of the ROHS Directive.

JBCE would also like to emphasize that some of the existing exemptions are crucial to categories 8 and 9 products and that these should be maintained in case of an inclusion of categories 8 and 9 into the scope of the ROHS Directive.

6. Include both with exemptions (tables 71&72) and deferred deadlines and general exemption for lead in solders (p.230&246-248)

7. Differentiate between consumer/industrial equipment for cat.9 (maximum deadline for industrial equipment: 2018)

8. Differentiate for In Vitro Diagnostics (IVD) (2016) and Active Implanted Medical Devices (AIMD) (permanent exclusion or exemption until 2020) (p.230)

II. SUBSTANCES COVERED [ARTICLE 6 OF ROHS]

A study to investigate possible policy options for fulfilling the requirements of Article 4(3) and 6 (§3 and 4) of RoHS was launched by DG ENV in October 2007; this study will consider all available relevant information and its results are expected for May 2008; the below indicated preliminary options are in line with the ones the study will examine and the present consultation can contribute by providing an early and informed feedback

1. Not add any new justified substances under RoHS and deal with them under REACH

>>> *JBCE supports this option*

JBCE is in favour of preventing legislative overlaps. Electrical and electronic equipment is fully covered by REACH and companies are currently preparing for compliance with the Regulation. Adding new substances to ROHS would result in additional administrative, financial, and managerial burden without additional environmental benefit.

2. Add new substances but only for certain categories of EEE in the scope of RoHS

3. Add new substances for all EEE, in the scope of RoHS but with exempted applications

4. Add new substances for all EEE without exemptions at a deferred date

5. Add new justified substances under RoHS only if substitutes already available and fully investigated

6. Link inclusion of substances at a given deadline (e.g 2014) with the results of a report on the efficiency of waste (WEEE) management for removing HS from the waste stream

7. Not add any new substances but introduce labelling requirements (for example certain phthalates for certain Medical Devices)

8. Not add any new substances but introduce obligation for easy removability of parts containing HS

III. TECHNICAL CHANGES TO THE SCOPE OF THE DIRECTIVE

1. Separate WEEE from RoHS scope

>>> JBCE supports this option

JBCE considers it necessary to clearly separate the ROHS scope from the WEEE scope. ROHS is an Article 95 Directive and WEEE is an Article 175 Directive which has resulted in many problems in terms of lack of clarity and differences in interpretation creating confusion at the levels of both industry and enforcement. Additionally, issues such as “fixed installations” and “large scale industrial tools” have been critical and problematic mainly in the context of WEEE.

JBCE is of the opinion that in addition to the separation of the scope there needs to be an assessment of the ROHS scope differences across all EU Member States. JBCE strongly calls for a harmonised ROHS scope across the EU.

2. Include explicitly spare parts & components

3. Insert in RoHS clause similar to WEEE Art 2.1 (excluding equipment which is part of another type of equipment that does not fall within the scope)

4. Insert in RoHS clause similar to WEEE Art 2.3 (excluding equipment which is intended for specifically military purposes)

5. Clarify status of consumables (include them in scope if part of the EEE when it is put on the market)

>>> JBCE does not support this option

The intent of the ROHS Directive is to regulate finished equipment, and not consumables. Similarly, consumables are excluded from the scope of the WEEE Directive. Indeed consumables such as ink cartridges do not fulfil the requirements of the definition of EEE in the ROHS Directive, as is already recognized in the Commission’s FAQ on WEEE and ROHS (section 1.10, p.11).

Moreover, it is not conceivable that identical consumables would be covered or not depending on whether or not they were included in the EEE at the time it was put on the market. Product regulations, such as those restricting the chemical

content of products, should be applied indiscriminately regardless of the means of delivery of products/consumables to users, be it in the packaging of an EEE, or through direct sales.

Moreover, chemicals in consumables are already regulated by EU Directives 67/548 and 99/45. Including them in the scope of RoHS will create redundancy and the risk of misinterpretations as well as unclarity.

Instead of the proposed option, we support the clarification that consumables do not fall under the scope of the ROHS in the revised text, and are not covered by ROHS even if they are part of the product when it is placed on the market.

6. Assess the need for including explicitly fixed installations

>>> JBCE does not support this option

JBCE is of the opinion that the issue of “fixed installations” is primarily a WEEE issue

7. Assess the need for maintaining a general exemption for LSIT (large-scale stationary industrial tools)

>>> JBCE does not support this option

JBCE is of the opinion that the issue of “fixed installations” is primarily a WEEE issue

8. Extend scope to cover all EEE

9. Add more specialized product categories in an indicative annex

10. "Repair as produced" principle : exclude parts for repairing and for the reuse of products lawfully placed on the market

>>> JBCE supports this option.

The principle of “repair as produced” is fundamentally important. The text of the ROHS Directive (Article 2.3) is clear concerning spare parts for the repair and re-use of EEE put on the market before 1 July 2006. This principle needs to apply

also to EEE put on the market after 1 July 2006 if lawfully making use of legally granted exemptions.

IV. DEFINITIONS

1. Insert new definition for "placing on the market"

>>> JBCE supports this option

JBCE calls for the insertion into the Directive of a definition of “placing on the market” that is line with the “Blue Guide”.

2. Insert new definitions for the economic operators (such as manufacturer, distributor, importer)

3. Insert definition for "fixed installations"

4. Add descriptive definitions for each product category (specifically proposed for cat.8&9 by ERA study)

5. Include a comitology procedure to update the list of illustrative examples thereby clarifying the status of 'grey area' products (see Art 19 of the Packaging and Packaging Waste Directive)

6. Insert definition for "homogeneous material" and the MCVs of the Commission decision

7. Insert definition for "spare parts"

V. FACILITATING IMPLEMENTATION

Va Enforcement of the RoHS Directive

1. Introduce market surveillance mechanisms

>>> JBCE supports this option.

JBCE believes in the usefulness of the “New Approach” in relation to market surveillance.

2. Include conformity assessment (CA) procedures (sub options: self declaration or third party verification) (suggested also in the "Enforcement Guide", prepared by the informal network, see above)

>>> JBCE supports this option in part.

JBCE generally welcomes the application of presumption of conformity and use of producer self-declarations of conformity.

However, JBCE rejects the use of 3rd-party verification.

3. Introduce marking to demonstrate RoHS compliance

4. Introduce common procedures for withdrawing non-compliant products from the market and for administrative cooperation

5. Use of (international) standards; elaboration of material data bases and material declaration formats

>>> JBCE supports the use of international standards. This is particularly the case for the measurement of ROHS substances according to the proposed international standard IEC 62321 which covers the worldwide understanding of how to do such measurements.

The development of a material declaration procedure, its criteria and its format are a work item of IEC TC111 WG1 together with the need for a related material and substance database. The currently available document for the declaration is IEC PAS 61906 which describes the methodology. This has been used as the starting point for IEC 62474 the material declaration standard..

Since many countries/regions have adopted or will be adopting legislation similar

to ROHS, we encourage the EU to support the on-going standardisation work in international fora such as the IEC. Also, we would like to confirm the above standardisation work for RoHS Directive are under the producer self-declaration methods.

6. Insert obligation for MS to collect and make available data

7. Insert review clause with or without progress criteria/indicators

8. Introduce stakeholder forum

9. Introduce implementation-related provisions already existing in WEEE, such as EEE producer traceability requirements (Art. 11(2)), producer register (Art.12(1)), information for users and treatment facilities (Art.10&11(1))

Vb. Mechanism for exemptions

1. No more exemptions, but reduce scope of the Directive (in terms of EEE or HS covered).

2. Remove additional requirement for stakeholder consultation (art.5.2 of RoHS)

3. Exemptions to be granted only for new technologies or only for new equipment

4. Industry and not public authorities to assume the burden of proof and cost

5. Manufacturers to provide substitution plan when requesting exemptions

6. Establish standard format for providing info on requested exemptions

7. Introduce cost/broader sustainability criteria for granting exemptions

>>> *JBCE supports this option*

JBCE considers it crucial that it is understood that supply chain realities and processes are a fundamental aspect of substitution.

8. Introduce other criteria for granting exemptions

>>> *JBCE supports this option*

JBCE emphasises that it considers it important to include further criteria for granting exemptions. Such criteria should relate to supply chain realities, such as lead times, reliability testing procedures, and availability of substitutes/alternative technologies, product complexity, product reliability, and product design cycle, as well as competition.

9. Exemption requests to be submitted directly to the TAC

END