

## **Response to DG Environment on the Review of Directive 2002/95/EC (RoHS)**

Deadline: 22 May 2007

### 1. POSSIBLE TOPICS OF THE REVIEW

#### TECHNICAL CHANGES TO THE SCOPE OF THE DIRECTIVE

##### **1.1 TECHNICAL CHANGES TO THE SCOPE OF THE DIRECTIVE**

###### **Relationship between the scopes of WEEE and ROHS**

JBCE proposes to “de-link” ROHS scope from the WEEE scope. It also suggests to define a clear scope for ROHS. We feel it is inconsistent for ROHS to refer to the scope of WEEE , because ROHS is an article 95 Directive while WEEE is based on article 175. Additionally, we also feel that the manner in which the 10 categories in Annex IA and Annex IB of the WEEE Directive are described leaves too much room for interpretation.

A Directive approximating the laws of the Member States vis-à-vis the technical characteristics of products can only function if its scope is clearly defined. This is not the case in the WEEE Directive. There are numerous examples of manufacturers not being able to clearly determine their legal obligations due to differing interpretations between Member States. This in turn affects the ability of Member States to properly enforce the legislation.

JBCE would also highly appreciate the development of an effective system for resolving “grey area” cases, i.e. lack of clarity if a product falls under one of the 10 categories currently listed in Annex I of the WEEE. Ideally, we would hope to see a dynamic mechanism within the TAC for resolving such issues (as is the case under the Packaging and Packaging Waste Directive), be it through the issuance of guidance documents or legally binding decisions. Whatever system is developed in the end, a relevant list should be published and updated regularly.

###### Spare Parts

The RoHS Directive does not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1 July 2006 (Article 2 Para 3). The concept of "repair of the product as it was originally put on the market" has therefore been accepted.

The very same rule should also apply to spare parts for EEE that have been put on the market after July 1, 2006 and that have to make use of an exemption laid down in the Annex. "Repair of the product as originally put on the market" is of fundamental importance for the electrical and electronic industry and our customers.

The EEE industry requests an exemption/derogation from the restriction of certain hazardous substances in spare parts for repair of EEE as originally put on the market for the following reasons:

- The RoHS directive (2002/95/EC) does not cover spare parts for EEE put on the market before 1 July 2006
- EEE put on the market between 1 July 2006 and the expiry dates of the exemptions concerned are equipped with parts containing exempted restricted substances
- After the expiry date of an exemption spare parts containing previously exempted restricted substances can no longer be put on the market, even if they are needed to repair EEE put on the market between 1 July 2006 and the expiry dates of the exemptions
- It is technically not feasible to develop spare parts without the restricted substances for EEE put on the market between 1 July 2006 and the expiry date of a relevant exemptions (lack of "backwards compatibility" due different technical properties).
- Thus, without the rule of repair of product as originally put on the market spare parts would become unavailable for the repair of EEE which were produced with parts containing exempted restricted substances, thus negatively impacting users of EEE and increasing the environmental impact, as more products would need to be scrapped instead of repaired.

## 1.5 FACILITATING IMPLEMENTATION

### Enforcement of the RoHS Directive

JBCE strongly supports a consistent and effective enforcement of the RoHS Directive in order to create a 'level playing field' across the EU Member States.

As the RoHS Directive does not prescribe any enforcement procedures or detail how compliance may be demonstrated, we are concerned that this leaves much room for differing enforcement decisions. This potentially creates uncertainty over the type of compliance information companies may be expected to provide.

Despite the RoHS Directive being an Article 95 Directive, the lack of enforcement procedures potentially leads to Member States enforcing RoHS differently. This is made more complicated by the fact that there is no clear agreement on the scope of RoHS, leaving many products as "grey area" products (e.g., semiconductor evaluation boards, laboratory testing equipment, etc.).

Additionally, there are no agreed standards yet to demonstrate compliance to RoHS, and the ongoing international standardization work on test methods (IEC 62321), which has not yet been agreed by industry, has not received widespread support by the EU Commission or the Member States. As a consequence, it is

difficult to industry to determine what the “applicable” standard or expectations will be in each separate Member State.

Moreover, the concept of “homogeneous material” is creating massive practical problems, when employing test methods. Homogeneous materials might be a good concept from a legal point of view, for example to ensure that even minute amounts of restricted substances are absent. However, practically the concept is not workable at all. Demonstrating compliance by requiring testing would mandate testing of up to thousands of different homogeneous materials for one single product. Moreover, as a result of the REACH Regulation, the concept of homogeneous materials may get even more confusing, because the relevant criteria of the so-called notification of certain substances in articles refer to the “article” level.

If the concept of “homogeneous materials” is kept, Member States should agree on how producers can demonstrate compliance using an agreed sample disjointment and testing methodology. Furthermore, a definition of “homogeneous material” should be added to the RoHS Directive to clarify how the term is to be interpreted and applied. Finally, Member States should clarify their expectations on producers to obtain certifications, maintain documentation, and keep records to demonstrate compliance. No penalties should be applied until the requirements for compliance have been clearly agreed upon by Member States

Finally, the RoHS Directive should be amended to include a “due diligence defence”, because on the basis of the ROHS Directive as it stand today it is impossible for a complex electronic product manufacturer to ensure that every part is fully RoHS compliant under any potential testing methodology.

We recognize and accept that it is not the role of the European Commission to specify how Member States should enforce the RoHS Directive. However, ‘Better Regulation’ and improved implementation and enforcement of environmental legislation are both key priorities for the EU Commission.

### Mechanism for exemptions

#### (1) Improved procedures for dealing with exemption requests to achieve more effective and rational examinations

At present, the Commission often has to deal exemption requests or related information that appear to lack a sound scientific basis. This results in delays in processing and places a considerable burden on the industries that participate in the examination process while providing additional information with regard to exemption requests. As part of efforts to improve the procedures for dealing with exemption requests, the Commission should examine them strictly in accordance with the Check List for Additional Exemptions, which was distributed in July 2004, and accept only those presenting valid and relevant reasons.

#### (2) Ensuring fair and transparent procedures

Though we highly appreciate the Commission’s efforts to solicit comments and opinions from various quarters when it examines exemption requests, it is regrettable that at the level of exemption request

review/analysis by the relevant Commission consultant sometimes only a some of the stakeholders are given access to the information with respect to the technologies concerned, while others are denied full access even if the stakeholder officially participates in the examination process. Fair and equal access to such information should be ensured.

(3) Clarification and disclosure of the criteria for granting exemptions (including market and technology factors)

A consideration of the situation so far shows that the judgment criteria employed in making final decisions concerning the granting of exemptions are not clear: In some cases exemptions have been granted to some companies that make exemption requests for specific applications although alternatives have been found and applied by many other companies (i.e. competitors; at the same level in the supply chain). Additionally, there are currently open cases where the development of an alternative material/technology at the very beginning of the supply chain (e.g. component/part) may be interpreted as meaning that the same/a corresponding alternative technology is directly and immediately available also at the end of the supply chain, i.e. at the level of producers and importers of finished EE products. This would mean disregarding the reality of the working of the supply chain, which often has up to 4 or 5 different part/component/module/product levels and where it is of fundamental importance to test and apply the new technology at each individual supply chain level before including I into a finished product (the one to be put on the EU market).

Neither TAC nor the Council has disclosed the judgment criteria employed in making final decisions concerning the granting of exemptions or the removal of existing exemptions for given applications of restricted substances. A full and detailed explanation with regard to final decisions made by TAC or the Council would be of great help to companies in developing technologies.

(4) Consideration for new technologies and innovations

We anticipate that exemption requests based on new technologies will be submitted in the future. Products manufactured utilizing such new technologies could not only spur innovation in the EU economy, but could also bring about considerable environmental benefits, including energy saving and recyclability. In light of the experience thus far, however, we are concerned that new products may not reach the market in a timely manner or may not reach it at all due to the time-consuming examination process currently employed for exemption requests.

Due consideration should be given to exemption requests with regard to such new technologies: Quick and effective procedures should be put into place, including a separate fast-track procedure for such exemption requests, so that the fruits of innovative technologies can be placed on the market in a timely manner and bring resulting environmental benefits to society.

2. OTHER ISSUES

SCOPE OF CATEGORY 8 & 9

JBCE fully supports the ERA report of Categories 8 and 9 of the ROHS Directive.

As mentioned below, equipment which belongs to categories 8 & 9 has a lot of unique characters.

Therefore, the situation of categories 8 & 9 for RoHS compliance is totally different from existing categories.

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. Involving advanced high technologies
4. Long product life [10-20 years]
5. Various specific components by custom design
6. Low volume and wide range of applications

In the review of Categories 8 and 9 of the RoHS Directive, JBCE would like to sufficiently reflect the ERA report.

### RESOURCE OF RARE METAL

The use of rare metals in alternative technologies is not without problems. Problematic aspects include, environmental concerns, mining quantities and area of production. We suggest that the issue of use of rare metals in alternative technologies should be given due weight when examining the feasibility of technologies for replacing prohibited substances. The use of rare metals as substitutes may not only sometimes result in negative environmental impacts at earlier stages (e.g. mining), but also be problematic from an quantity/availability point of view (natural resources), as well as from a political or geo-political perspective. In the case of substituting lead in solder, availability or environmental issues go with the application of alternatives, such as silver, copper, gold, and indium. Therefore, such alternatives/substitutes may indeed only be short-term alternatives/substitutes.