Consultation on the Implementation of the Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive 2011/65/EU: Response Form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is **6 July 2012**

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Please tick a box from the list of options below that best describes you as a respondent. This allows views to be presented by group type.

O	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)

	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

Question 1

Do you agree with the interpretation of Article 2.2?

Comments:

JBCE recognizes that the interpretation of Article 2.2 is in line with the legal implications of the RoHS recast legal text. There is however strong concern that a “hard stop” as such would result in a number of unforeseen side-effects, resulting in a negative impact on the economic, social and environmental level. Some examples:

- perfectly accepted practices like second-hand and refurbishment operations/business models would be greatly affected as products that return from the market can no longer be made available after 22 July 2019 if they don’t comply with both substance and administrative requirements

- as spare parts are in some cases considered EEE the provision of Article 2.2 potentially undermines the “repair as produced” principle

The European Commission has in the meantime become aware of a number of potential issues, such as referenced above, which specifically relate to the formulation of Article 2.2 in function of “making available on the market”. Therefore within the context of the ongoing impact assessment performed by BIO IS by order of the European Commission this particular provision is now being more thorougly assessed.

JBCE in this respect would appreciate if BIS would further monitor the outcome of this process before issuing its guidance to avoid any possible confusion within the global supply chain.

Question 2

Do you agree the Regulations contain only what is necessary to meet the requirements of the Directive?

Comments:

JBCE appreciates that the Regulations transpose as much as possible the Directive recast text on the basis of “copy out”.

We do however have a strong concern with regard to the definition of EEE, especially as defined in Regulation 4(3)

(3) References to EEE include references to cables and spare parts for its repair, its reuse, updating of its functionalities or upgrading of its capacity

In our view this extends beyond what is considered in the RoHS recast and is not generally applicable to and/or relevant for all related provisions.

Another important distinction which isn't being made in the draft regulations is the difference between "EEE" on the one hand and "finished EEE" on the other hand.

JBCE calls upon the UK to adopt terminology fully in line with the RoHS recast text so that there is a common understanding of the provisions upon transposition.

Question 3

Requirements will come into place on the Directive implementation date (2 January 2013) as no transition period is provided for. How should the transition to conformity and marking requirements be managed?

Comments:

Where EEE falling within the scope of the RoHS recast and meeting the substance restrictions, procedural requirements and other requirements, is placed on the market on or after the Directive's entry into force date (21 July 2011), it may be CE marked and include a reference on its Declaration of Conformity even if the substance restrictions do not yet apply.

Similarly this should also be the case for product categories for which the substance restrictions are gradually implemented.

Question 4

Do you have any comments on the draft Regulations' interpretation of the obligations for the supply chain for CE marking or alternative proposals?

Comments: No comments

Question 5

Do you agree with the proposed enforcement regime's powers of entry and offences for non-compliance? Do you agree with the reversal of the burden of proof of establishing when it is "not possible" or "not warranted" to affix the CE mark at Regulation 37(5)?"

Comments: No comments

Question 6

Do you agree with the assumptions made in the Impact Assessment?

Comments: No comments

Question 7

Do you agree with the costs and benefits in the Impact Assessment? If not, please provide evidence of different figures.

Comments: No comments

Question 8

Are there any examples of products you think may be ambiguous in meeting the exemptions?

Comments: No comments

Question 9

Some products which were included in the original scope will now fall out of scope. Can you provide examples of products you believe might be affected?

Comments: No comments

Question 10

Are there significant new products coming into category 11 you think we may not have captured in the impact assessment? This can be new items not in the other categories, or items falling in the scope of EEE from the new definitions.

Comments: No comments

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Considering the intent of the RoHS recast was to build upon the strengths of the original RoHS Directive and improve the shortcomings, JBCE regrets the RoHS recast fails to do so on a number of issues. Herewith JBCE would like to raise its main concerns which might heavily impact on industry in general as well as existing EU policies:

- the implications of the current Article 2.2 provision undermine existing and generally accepted principles such as the “repair as produced” principle or business models based on or driven by second-hand and refurbishment operations

- there's currently much unclarity and legal uncertainty as to how the administrative provisions introduced by the NLF framework should be implemented, especially in view of what should be considered "EEE" and finished "EEE"

- where the CE mark has played a pivotal role in acceptance of goods within the European Single Market, a non-harmonized implementation of the RoHS scope throughout the Member States will result in legal uncertainty and market fragmentation

Whereas JBCE recognizes that these issues form part of a discussion which largely takes place at a higher level, it would appreciate if the UK could take the above in consideration to work towards a more harmonized approach within the EU and to ensure legal certainty and clarity which would allow for a succesful implementation within global supply chains as well as a level playing field.

Next to that JBCE would like to submit following more detailed remarks related to the "Draft government guidance notes"

- Exemptions

  Item 17 on exemptions should be corrected to include caterogies 8 and 9 as well when referencing the exemptions under Annex III of the RoHS Directive. This is supported by Article 5(2) of the RoHS Directive text.

- Annex A – EEE categories for RoHS

  "Other additions" mentions any products in categories 1-7 or 10 not covered by the original Directive come into scope from 23 July 2019. On the other hand we find under Item 58 second bullet of the consultation paper that to some extent also category 8 and 9 products benefit from this provision. It would be good if this could be clarified in Annex A as well..

- Annex B – Decision tree

  As Annex B is recommended for economic operators to assess whether their products will be in scope, it is important that the decision tree provides accurate and clear information to allow for the right judgment. Therefore we would like to highlight the following:

  - Page 32 – "Medical device or monitoring and control instrument placed on the market before 22 July 2014? **Or** In vitro Medical device placed on the market before 22 July 2016? **Or** Industrial monitoring and control instrument placed on the market before 22 July 2017? **Or** Any other EEE placed on the market before 23 July 2019"

  - Page 33 – "Covered by a specific exemption?" seems to contain both exemptions and exclusions. Therefore the conclusion that if covered by any of these the product should be considered out of scope might not generally apply. For instance an exemption as listed in Annex III or IV won't exclude a product from the scope.

- Page 33 – It is our understanding that under “Covered by a specific exemption?” the statement “On the exempted products list?” should refer to the relevant provisions of the RoHS Directive which exclude a number of products from the scope. It would be good if this could be further specified or clarified.

- Page 33 – “Covered by a specific exemption?” does not indicate “spare parts for EEE which benefit an exemption and placed on the market before the expiry of that exemption”

- Page 33 – Although “Electricity is needed for primary function” is part of the decision tree, it is nowhere further mentioned or clarified within the guidance notes. It is also unclear in the case of when electricity is not needed for primary function whether the product should be regarded to be out of scope or whether the requirements will only apply as from 22 July 2019.

Thank you for your views on this consultation and for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would you be happy for us to contact you from time to time either for research purposes or to send through consultation documents?

☒ Yes ☐ ~~No~~

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