2nd June 2022

JBCE Contribution for Public Consultation

JBCE considers the RoHS Directive an important and successful piece of environmental legislation and element in the New Legislative Framework. At the same time, we are interested in making the Directive more efficient and therefore are happy to participate in the latest public consultation. Below you find listed the main points of our position on the Directive Review.

1. Criteria for the assessment of exemptions

- **Existing additional parameters should become criteria**

The currently existing formal criteria are appropriate and understandable. However, the whole process would benefit from turning currently existing additional parameters mentioned in Article 5.1 (a) into additional formal criteria to justify an exemption:
- the availability of substitutes
- the socioeconomic impact of substitution
- any potential adverse impacts on innovation
- Lifecycle thinking on the overall impacts of the exemption

- **Use of restricted substances in very small amounts**

Restricted substances that are used in very small amounts should be approached from the perspective of proportionality. Substitution of certain restricted substances used in very small amounts may have major effects in terms of resources and investment. Against the background of big amounts of resources and investment being spent on substitution of substances used in very small amounts, it could be useful to consider the potential societal benefits of spending these resources and investment on innovation other than aforementioned substitution. Therefore, a criterion should be introduced which would make it possible to grant exemptions for certain, limited use of a very small quantity of a restricted substance.

- **New technologies**

Article 5.1(a) criteria should apply to new and existing technologies. Especially for new exemptions, improvements in the effectiveness and speed of the exemption granting process would be very beneficial. Additionally, sufficient time is required to prepare for compliance and thus be ready for market access. Generally, the RoHS Directive should not hinder innovation and should not prevent new technologies being made available in the EU.

The perovskite medical imaging detector using lead is as an example in case: This detector has been developed under the PEROXIS project[1] funded by the EU's Horizon 2020 research and innovation program. The Pack 21 final report[2] argues against granting an exemption, stating:

1. new developments can be taken into account in principle,
2. applicants shall provide the information in line with §5(1)(a), and
3. applicants could place a new product on the market after the two-year evaluation phase.

Against the above point 2, it would be difficult for applicants to show all negative impacts on environmental and health protection (which corresponds to items 4.5 and 5.3 of the RoHS exemption request form) because new products do not yet have any market record.

Against the above point 3, the long evaluation phase hinders EU citizens from enjoying the benefits of using a new product. Even if a new development is achieved by a publicly funded R&D projects in EU, such as Horizon 2020, non-EU citizens would benefit from it first before EU citizens could.

Also, regardless of a public project, business uncertainty around a new product requiring a new RoHS exemption might discourage companies - particularly startups and SMEs - from investing in R&D. Such uncertainty should be resolved.

Finally, it is important to allow for a proper balance between the reduction of restricted substances and the social benefits that go with a new innovative product. From this perspective, the RoHS exemption evaluation process should be carried out within one year.

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[1] European Commission, CORDIS, Horizon 2020, *ground-breaking PEROvskite technologies for advanced X-ray medical Imaging Systems*. https://cordis.europa.eu/project/id/871336 (accessed 30th May 2022)

[2] European Commission, *Study to assess requests for renewal of 16 exemptions to Annex IV of Directive 2011/65/EU, Final Report*. https://www.rohs.biois.eu/RoHS-Pack-21_Final-Report.pdf

- **CRM-containing substitute**

Future demand of primary critical raw materials in the EU will continue to be largely met by imports – both in the medium and in the long term.[3] If an exemption is not granted or withdrawn based on the possibility to use CRMs, one major consequence could be shortage of supply of these raw materials and, consequently, a shortage of certain EEE as well. Thus, the availability of CRM substances should be carefully assessed before an existing exemption is rejected or a new exemption is not granted.

For example, tungsten, which is seen as substitute of lead in X ray shielding in Annex IV-5, is one of the CRMs. 99 % of the total supply of tungsten is imported from outside the EU, 69 % of which comes from China, the world biggest source of tungsten.[4] If exemption of IV-5 is not granted, 420 tons/year of lead shielding used in Categories 8 and 9 products would be substituted by ca. 330 to 570 tons/year of tungsten. In other words, there would have to be certainty that this amount of tungsten will be constantly available in the future in case the existing exemption is rejected.

2. **Exemption mechanism**

The current process functions well apart from the issue of delays. Decisions on RoHS exemptions are accepted by all stakeholders. Required improvements are independent of the consultant or agency that assesses the requests.

The current methodology allows for assessment based on product specific knowledge and it is not limited to the knowledge of chemical substances.

3. **Exemption validity and transition periods**

- **Exemption validity periods and respective expiry dates**

We welcome the fact that the validity periods and expiry dates for category 11 products will be the same as for categories 1-7 and 10.

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[3] European Commission, *Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions*. Brussels, 3.9.2020, COM (2020) 474 final, p. 3 and 6.

[4] European Commission, *Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions*. Brussels, 3.9.2020, COM (2020) 474 final, p. 22.

However, longer validity periods are required for category 8 and 9 products with long lifetime, long design cycles and high requirement for reliability.
Regarding Annex III, with the renewal of the exemption for the categories 1 to 7, 10 and 11 every five years we simultaneously apply for the renewal of the exemption for categories 8 and 9 for the next validity period of seven years. Therefore, there is no additional administrative burden associated with this approach.

- **Transition period**

Article 5.6 states that if an application for renewal of an exemption is rejected or an exemption is revoked, the exemption shall expire at the earliest 12 months, and at the latest 18 month, after the date of the decision. However, this transition period is too short. Especially categories 8 and 9 products are often forced to buy components for their design lifetime, a large amount of component will be wasted in case the transition period is too short.

4. **Exemption wording**

The wordings of exemptions should be simple and easy to understand for all stakeholders. Complex and complicated wording can cause a confusion in the long and multi-layered supply chain.

5. **Spare Parts**

Current provisions in Article 4 allow for the repair of legacy equipment, which consequently prevents a huge amount of EEE becoming waste. These provisions should continue to apply in line with the EU Circular Economy strategy. If these provisions for spare parts are changed and legacy parts are no longer allowed to be used for repair and refurbishment, the amount of EEE waste will increase sharply.

6. **Exclusion of reference materials**

Reference materials should be excluded from the RoHS scope. Reference materials are used for identifying a substance or calibrating an analytical instrument by using the substance's own properties. Reference materials are therefore essential for accurate measurements. Substitution is not possible because it derives from the measurement

principle and the substance itself is referenced. A representative example of using a reference material is calibration with a mercury lamp.
Reference materials are used in strictly controlled laboratories where precision analyses and calibrations are carried out. Therefore, restricted reference materials are not to be discarded as ordinary waste. The amount of reference materials placed on the EU market is very small. Thus, even if reference materials are to be excluded from the RoHS scope, these would not undermine the RoHS's goal to protect human health and the environment.
For the above reasons, we believe that it is a reasonable way to exclude reference materials from the RoHS scope in order to reduce the administrative burden including the evaluation of RoHS exemption and market surveillance.

About JBCE

Created in 1999, the Japan Business Council in Europe (JBCE) is a leading European organisation representing the interests of more than 90 multinational companies of Japanese parentage active in Europe.
Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, steel, textiles and glass products.
Building a new era of cooperation between the European Union (EU) and Japan is the core of our activities, which we perform under several committees focusing on: Corporate Policy, Corporate Social Responsibility, Digital Innovation, Environment & Energy, Standards and Conformity, and Trade.
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