Additional Member State survey – public consultation on the Revision of Directive 2011/65/EU on restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS Directive)

NLse reactie op additionele survey voor Lidstaten. Datum: 30-05-2022

Lees- en gebruiksinstructies:

- Voorgestelde NLse antwoorden staan in groen lettertype
- De voorgestelde antwoorden worden uiteindelijk online ingevuld. Dit document volgt de opmaak van de online vragenlijst.

1. Transposition

1.1. Dynamic Links

Some Member States make use of 'dynamic links' in national legislation to the RoHS Directive. A dynamic link entails a general reference to the Directive (e.g., with regards to the applicability of Annexes III and IV). This means that any changes to these Annexes are immediately applicable in national legislation. Other Member States have chosen a 'manual' transposition of amendments to the RoHS Directive (e.g., amendments to Annexes III and IV) which may require a more time consuming national legislative process.
The frequent need for transposition of amendments of RoHS was identified in the evaluation as an issue that may lead to non-homogenous implementation of the Directive among Member States.

1. Does your country use dynamic links to the RoHS Directive as means to transpose changes to the Annexes?

X Yes
No

If you answered no, please detail the reasons behind not doing so, e.g., constitutional issues, required national legislative process etc. Please also indicate the average timeframe needed for the transposition in your Member State if possible.

2. Exemptions

2.1. Challenges in the enforcement due to complexity of Annexes

The RoHS Directive, in its Annexes, currently contains seven pages of time-limited detailed exemptions, covering many different technical applications e.g., lighting equipment, medical devices, basic electrical components, lead containing alloys used in EEE and others. Over time, exemptions that previously covered a wide-scope of applications have been specified and where possible narrowed to limit their scope to

certain applications for which alternatives are not available or practical. Thus, the technical complexity and level of detail of the exemptions have increased over time.

2. How has this development affected the enforcement of the Directive?

- ○ The specification of exemptions makes enforcement more complicated
- ◉ The specification of exemptions eases the enforcement of the Directive
- ○ In some cases this development eases enforcement and in others it adds to its complexity
- ○ No observations

Please explain your answer and provide suggestions for improvement if relevant.

2.2. Proportionality

Some of the applications which benefit from RoHS exemptions make use of very small volumes of restricted substance, e.g. lead in platinized platinum electrodes which is estimated to result in less than 1 gram of lead being placed on the EU market annually*. In some cases, it has been questioned if the efforts to limit the scope of an exemption are proportionate to the possible outcomes, namely of preventing risks from the respective hazardous substances.

3. Against this background, what type of change could be considered to better address proportionality for exemptions (multiple answers are possible)?

- ☑ Other measures should be implemented instead of the restriction to ensure that risks of emission of the substance are controlled (i.e., 100% collection and treatment through a take back system)
- ☑ Exemptions could be granted for a longer duration, e.g., for ten years,
- ☐ Indefinite exemptions should be possible (i.e., no expiration date)
- ☑ Simplify the exemption evaluation process in cases when the amount of RoHS restricted substance is very low, and/or the number of items placed on the market is very low
- ☐ Other – please detail

*See exemption application from 2017: https://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_pack_14/Annex_IV_37/Application/Ares_2017_3344784_JBCE_RoHS_ANNEX_IV_37_Application.pdf

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2.3. Closed-loop reuse and recycling

In some exemption requests it has been claimed that the EEE is collected and treated in a closed loop manner, enabling the recycling of the material in which the RoHS restricted substance is contained and its use in the manufacture of new items. In such cases, stakeholders argue that since the hazardous substance containing EEE is collected and treated in a closed-loop manner, that the risk of contaminating other material streams or adversely affecting the environment and human health is sufficiently controlled.

4. In which cases, if any, do you think that exemptions would be justified for the use of recycled content that contains RoHS restricted substances at a level above the Annex III threshold?

- ○ The Annex III threshold should always be kept: the same conditions that apply for primary materials should also apply to secondary ones,
- ○ Exemptions should be possible as long as it can be established that the system operates in a closed loop manner, i.e., through additional certification of the source of the secondary material and the waste from which it has been obtained,
- ○ Exemptions should only be possible when the EEE is sold on a business to business basis and when a take back system exists that ensures 100% take back,
- ◉ Other – please detail

Toelichting:

The Netherlands has advocated in the past years to examine, on a case-by-case basis, whether materials containing substances of concern which cannot be removed from the material (1) can be reused in certain applications where the risks for human health and the environment are negligible, provided that (2) reuse has an overall advantage from a health, environmental and climate perspective, taking into account the full life-cycle of the products in which reuse may take place and which would otherwise require the use of primary material. The prerequisite of the absence of a negative impact should obviously also pertain to recycling workers' safety. Determining the overall advantage of reuse from a health, environmental and climate perspective should also take into account the possible disadvantage of recycling leading to an increased amount of contaminated materials (i.e. dilution of the substances of concern). Essential is to also ensure that the presence of substances of concern in materials is communicated in a transparent manner, that the use of such materials is only allowed in clearly defined and isolated applications, that these applications remain traceable, and that arrangements are in place for collection upon end-of-use for safe recycling. The case-by-case examination could comprise a stepwise methodology with the following steps: 1) determining the options to be compared (landfilling, incineration, mechanical recycling, and

relevant types of chemical recycling); 2) assessing overall health and environmental impacts of all relevant options; and 3) selecting preferable options to minimize risks to health and environment[1].

In some exemption requests, it has been claimed that EEE is distributed in an auditable closed-loop business-to-business return system. Such systems allow the collection of the EEE from the consumer, its refurbishment or remanufacturing to ensure the functionality of the EEE and its resale as a used EEE. The Directive specifies some exclusions for such equipment under Article 4(5) to enable a circular economy but does not cover cases where the practice is of global nature, i.e., where EEE first placed on the market outside the EU is refurbished and then resold to an EU consumer (in which case the EEE is placed on the market for the first time and would need to comply with the RoHS Directive).

5. How should the Directive deal with such cases?

- ○ No changes are necessary, such cases would be dealt with through the exemption evaluation process
- ○ A provision should be included to allow global practices that enable reuse for all EEE
- ◉ A provision should be included to allow global practices under specific conditions – please detail which (Toelichting: if the product complied – at moment of market introduction outside of the Union – with EU legislation)
- ○ Other – please detail

Previous

2.4. Import & Export of EEE

The RoHS Directive restricts the placing on the EU market of EEE containing a hazardous substance above the permitted concentration. The EEE market is a global market and many articles are imported or exported in/out of the EU market.
It might be the case, that economic operators request an exemption on the basis of external circumstances outside the EU, claiming that the criteria for an exemption are fulfilled. However, the circumstances in the EU are different, which could result in a different evaluation. For example, an applicant claims that the legacy concentration of lead in a recycled material is higher than the 0.1% threshold stipulated in Annex II of the RoHS Directive and it is technically and/or economically not feasible to lower the concentration in the short-term. Though when the respective article is manufactured outside of the EU and due to, among others, different material supplies and waste infrastructure this may be plausible, the situation can deviate from the EU market.

[1] For more information, see: European Commission. (2019). CleaR – Clean material Recycling project – study for the development of an evidence-based approach as support to regulators when assessing how to manage the presence of substances of concern in recycled materials. Retrieved from: https://op.europa.eu/en/publication-detail/-/publication/26e22c04-5b62-11e9-9c52-01aa75ed71a1/language-en/format-PDF

6. Would you agree with the following sentence? Please check the respective box.

○ Applicants should indicate by request the extent of imported articles under the requested exemption.

◉ If a technical application, which does not require an exemption, in the EU exists, there cannot be an exemption for imported products.

3. Market Surveillance

3.1. Difficulties in market surveillance

The evaluation of the RoHS Directive indicated that Member State authorities may encounter challenges/difficulties when carrying out market surveillance for the Directive. Note: Some of these issues may have been solved after the entry into application of Regulation (EC) 2019/1020 on 16 July 2021. Therefore, please consider the new provisions in your replies and where relevant refer to the last 8 months, in particular.

7. Have you encountered difficulties when carrying out market surveillance for the RoHS Directive?	**Yes**	**No**	**No observation**			
	X					
QUESTION	**Strongly agree**	**Agree**	**Neutral**	**Disagree**	**Strongly Disagree**	**Don't know**
IF YOU ANSWERED YES, PLEASE DETAIL TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES Lack of relevant expertise of the authority				X		
IF YOU ANSWERED YES, PLEASE DETAIL TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES Lack of capacity/human resources of the authority				X		
IF YOU ANSWERED YES, PLEASE DETAIL				X		

TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES Lack of technical resources (laboratory facilities or technical tools) of the authority						
IF YOU ANSWERED YES, PLEASE DETAIL TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES Lack of legal clarity for the enforcement authority				X		
IF YOU ANSWERED YES, PLEASE DETAIL TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES We give priority to enforcing more specific national provisions				X		
IF YOU ANSWERED YES, PLEASE DETAIL TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES RoHS Directive overlaps with another piece of EU legislation when it comes to enforcing it				X		
IF YOU ANSWERED YES, PLEASE DETAIL TO WHAT EXTENT YOU AGREE WITH THE FOLLOWING REASONS GIVING RISE TO THOSE DIFFICULTIES Internet sales of EEE from third countries	X					

If you answered other, please detail your answer:						

3.2. Market surveillance guidance

The evaluation of the RoHS Directive indicated differences in approaches of Member States as to the market surveillance related to the Directive. These differences relate to surveillance activities, techniques and tools as well as to the recorded data on enforcement activities (including categorization and definition of data).

8. Do you perceive a need for more market surveillance guidance for the RoHS Directive at EU level?

(•) Yes ( ) No

If you answered yes, please detail your answer and any suggestions.

The Netherlands thinks such guidance, with corresponding 'best practices', could help improve the overall surveillance of the RoHS in the EU, if updated regularly.

3.3. Identification of hazardous substances in EEE

In the evaluation it was found that the simplest and at the same time most economical way used in the market surveillance seems to be the verification of the labelling and documentation obligations. That means, the control typically focuses on checking for the presence and correct application of the CE marking, as well as the presence and validity of the declaration of conformity. By means of this procedure, it is understood that it is often not evident from the declaration of conformity of an EEE if compliance with RoHS has been achieved through the application of existing exemptions or through substitution. Further investigation must be performed by the authority to find out if an exemption has been used, in what application (i.e., components and material) and what concentration of restricted substance is contained.

9. Do you see room for improvement in the documentation obligation in view of using a RoHS exemption (multiple answers are possible)?

X Yes – harmonisation is needed as to the Declaration of Conformity requiring as minimum that it contains the following information:

X Yes - Specification of which exemption/s of the RoHS Directive have been used to achieve compliance

X Yes - Specification of the applications (e.g., material, component) in which exemption/s of the RoHS Directive are used to achieve compliance

No

10. If you answered yes, please specify which aspects you think should facilitate the harmonization of the Declaration of Conformity (multiple answers are possible):

X Harmonisation will support more efficient market surveillance,

X Harmonisation will enable better communication on the use of RoHS substances in the supply chain,

X Harmonisation will allow transparency as to the use of RoHS substances for consumers and /or waste management operators,

Other – please detail

If you answered yes or want to give any suggestions, please detail here: