

January 27th 2010

Business concerns surrounding the lack of impact assessment on the ‘open scope’ of the RoHS directive

As a pan-European business community, we have experience in complying with the RoHS Directives restricting the use of certain hazardous substances in electrical and electronic equipment, across Europe. Today, the RoHS directive applies to 8 product categories, from small and large household appliances to ICT and consumer equipment, up to lighting equipment, tools and toys. We are following with interest the current revision of the RoHS Directive, in particular the recent proposal to open up the scope of the RoHS Directive to all “EEE” (as defined in Article 3(a)), rather than limit its scope by reference to the list of categories previously contained in Annex I. as proposed in the recast text from the Commission¹.

Since the Commission did not assess the option of an ‘open scope’ in its impact assessment, the recast proposal which it accompanies, does not propose an open scope. However both the Council² and the Parliament³ are currently discussing the open scope option.

The approach endorsed by the Community institutions to date emphasises the fact that an issue as important as scope expansion requires a thorough impact assessment:

- The Commission, Parliament and Council expressly recognised the positive contribution of impact assessments in improving the quality of Community legislation in the 2003 Inter-Institutional Agreement on Better Lawmaking⁴ “*with particular regard to the scope and substance thereof*”.⁵ (emphasis added) Further, the agreement states that “*where the codecision procedure applies, the European Parliament and Council may, on the basis of jointly defined criteria and procedures, have impact assessments carried out prior to the adoption of any*

¹Proposing also to include medical devices and monitoring and control instruments

² [add reference to council document available]

³ Draft report

<http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARTL&mode=XML&language=EN&reference=PE430.424>

⁴ Official Journal C 321, 31/12/2003, pages 1-5.

⁵ Ibid., paragraph 28.

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substantive amendment, either at first reading or at the conciliation stage.”⁶

- A common methodology on impact assessments is contained in the Common Approach to Impact Assessment (2005)⁷. This states that the three Institutions “*consider it essential that the assessment of the impacts of initiatives and substantive amendments is rigorous and comprehensive, and is based on accurate, objective and complete information*”⁸ and “*agree that the impact assessment process should be transparent. ... The three Institutions also agree that there should be, where reasonably possible and without causing undue delay in the legislative process, appropriate consultation for impact assessments.*”⁹ (emphasis added). **This position is further reinforced by the EC Impact Assessment Guidelines revised on January 15th 2009**¹⁰[SEC(2009) 92]

We would like to raise our concern about the lack of any adequate consultation or impact assessment about this move to an ‘open scope’.

These concerns are in no way allayed by the study on the impact of an extension of the scope of RoHS, which we understand is being carried out by a Danish consultancy for the Danish EPA. We understand that this study has a very limited scope: it was conducted within a very short time frame, it will base its conclusions solely on existing research, and is specifically not assessing the impact of an ‘open scope’ for RoHS. Critically, the study is being carried out without any public consultation.

To introduce an ‘open scope’ with no impact assessment, aside from a limited study, would be a dangerous precedent and a clear step back from the principles of better lawmaking espoused by the EU institutions.

It should be underlined that the move to an ‘open scope’ would fundamentally impact on companies which manufacture products not contained in the current category list. By way of example, the following products, not previously covered, could potentially be brought into the scope of RoHS (unless clearly excluded by language in the body of the Directive):

⁶ Ibid., paragraph 30.

⁷ Available on :

http://ec.europa.eu/governance/impact/key_docs/docs/ii_common_approach_to_ia_en.pdf

⁸ Ibid., paragraph 5.

⁹ Ibid., paragraph 7.

¹⁰ [SEC(2009) 92] -

http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

- Equipment used for renewable or alternative energy production (wind turbines, solar panels, fuel cells, geothermal power systems);
- Large industrial applications for uninterruptible power supplies (“UPS”) and their supervision, control and safety systems (either permanently connected to sub-station or forming a stand-alone unit for military or construction purposes, or as a backup power plant for hospitals and the like);
- Equipment used in modes of transport (aviation electronics and aircraft engines, rail, ships, including marine vessels, vehicles electronics);
- Equipment designed to operate at the upper voltage ranges (between, for example, 230 and 1000 Vac/Vdc), which did not fall under the current categories;
- Complex integrated building systems such as supermarket refrigeration systems and centralised air-conditioning systems for commercial buildings, elevators and escalators;
- Large-scale stationary industrial tools (“LSSIT”) designed for specialist applications.
- Any device or appliance designed to be worn or held by an individual for protection against one or more health and safety hazards (e.g. Personal Protective Equipment).
- Consumables & Accessories are not in the scope of RoHS. Any proposal for inclusion of consumables and accessories should be based on sound impact assessment.

There are no doubt other products that could be affected. However, even considering this list, it is clear that the impact of an ‘open scope’ of RoHS could be dramatic. All of these products may, to some extent, contain substances prohibited by RoHS. There may not be any viable substitute available in the immediate future. Some of these products have systemic importance (power supply and transport), others have important environmental benefits (equipment for renewable energy production) or critical safety implications in the event of failure (for example higher voltage equipment and equipment for specialist or high end applications). Inclusion in RoHS would effectively mean that these types of equipment are prohibited on the EU market. If the intention is to move to an ‘open scope’, then this should be based on an assessment which gives full and detailed consideration to the impact of such a proposal, including (but not limited to) the existence of alternatives for the banned substances, the time-line needed for transition to RoHS compliance, the exemptions needed and proportionality of the measure.

We therefore conclude that the only way to assess the real economic, social and environmental impact of an ‘open scope’ of RoHS is by conducting a thorough impact assessment. Furthermore, industry should also be properly consulted, since the companies affected are best placed to explain which specific products might be impacted.

In the absence of a fully reasoned impact assessment based on a process of transparent consultation with interested parties, any wider amendment of the scope of RoHS is legally unjustified

Finally, we would like to recall the conclusions from the Competitiveness Council meeting of December 4th 2009 which “stresses that the use of impact assessments by EU institutions must be improved and that the presentation and quality of assessments must be enhanced so as to allow for better evidence-based decision-making and high quality legislation”.

In light of this, we urge you to resist the proposal to move to an ‘open scope’ for the RoHS Directive, unless and until a proper impact assessment is carried out.

Yours Sincerely,

Ivan Hodac, *Secretary General ACEA*

John Vassallo, *Chair AmCham EU*

Bridget Cosgrave., *Director General Digital Europe*

James Lovegrove, *Managing Director TechAmerica Europe*

Takuya Fukumoto, *Secretary General Japan Business Council in Europe*

The European Automobile Manufacturers Association (ACEA), founded in 1991, represents the interests of the fifteen European car, truck and bus manufacturers at EU level. Its membership consists of the major international automobile companies, working together in an active association to ensure effective communication and negotiation with legislative, commercial, technical, consumer, environmental and other interests. The members of ACEA are competitors in the automobile market place and support free and fair competition as a trade policy and a legal concept

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.2 trillion in 2008 and currently supports 4.8 million direct jobs in Europe.

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DIGITALEUROPE is the pre-eminent advocacy group of the European digital economy acting on behalf of the information technology, consumer electronics and telecommunications sectors. We are dedicated to improving the business environment, and to promoting industry’s contribution to economic growth and social progress in the



European Union. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE’s members include more than 60 leading corporations and 40 national trade associations from all the Member States of EU; altogether 10,000 companies with 2 million employees and €1,000 billion in revenues.

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The Japan Business Council in Europe was established in 1999 as the representative organisation of Japanese companies operating in the European Union. Our membership consists of more than 60 leading multinational corporations that are active across a wide range of sectors, including electronics, automotive, and chemical manufacturing.

The key goal of JBCE is to contribute to EU public policy in a positive and constructive way. In doing this, we can draw upon the expertise and experience of our member companies.

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TechAmerica Europe represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. TechAmerica Europe Member companies are active throughout the high-technology spectrum, from software, semiconductors and computers to Internet technology, advanced electronics and telecommunications systems and services. Our parent company, TechAmerica, is the oldest and largest high-tech association in the US.

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