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Committee on the Environment, Public Health and Food Safety

2008/0240(COD)

22.10.2009

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on the restriction of the use of certain hazardous substances in electrical and
electronic equipment (recast)
(COM(2008)0809 – C6-0471/2008 – 2008/0240(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Jill Evans

(Recast - Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast)

(COM(2008)0809 – C6-0471/2008 – 2008/0240(COD))

(Codecision procedure - recast)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0809),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0471/2008),
 - having regard to Rules 87 and 55 of its Rules of Procedure,
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

Amendment 1

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 gives first priority to prevention in waste legislation. Prevention is defined inter alia as measures that reduce the content of harmful substances in materials and products.

Or. en

Justification

The recast of RoHS should be put into the context of the waste hierarchy established in the waste framework directive in 2008. Prevention is the top priority in the binding waste hierarchy. Prevention includes measures to reduce the content of harmful substances in materials and products. The recast of RoHS recast is therefore an important opportunity to translate this obligation into concrete action, all the more that electrical and electronic

equipment (EEE) continues to create numerous problems during waste treatment.

Amendment 2

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) The Council Resolution of 25 January 1988 on a Community action programme to combat environmental pollution by cadmium¹ invites the Commission to pursue without delay the development of specific measures for such a programme. Human health also has to be protected and an overall strategy that in particular restricts the use of cadmium and stimulates research into substitutes should therefore be implemented. That Resolution stresses that the use of cadmium should be limited to cases where such use is suitable and safer alternatives do not exist.

¹ OJ C 30, 4.2.1988, p. 1.

Or. en

Justification

The reference to the Council Resolution of 1988 (Recital 4 of current RoHS) should be reinstated as it is the political reference for combating environmental pollution by cadmium.

Amendment 3

Proposal for a directive Recital 3 c (new)

Text proposed by the Commission

Amendment

(3c) The European Parliament, in its resolution of 14 November 1996 on the communication from the Commission on the review of the Community Strategy on Waste Management and the draft Council resolution on waste policy¹, asked the Commission to present proposals for directives on a number of priority waste

streams, including electrical and electronic waste. The European Parliament, in the same Resolution, requested the Council and the Commission to put forward proposals to reduce the presence of hazardous substances in waste such as chlorine, mercury, polyvinyl chloride (PVC), cadmium and other heavy metals.
¹ OJ C 362, 2.12.1996, p. 241.

Or. en

Justification

The reference to the Parliament Resolution of 1996 (Recital 4 of current RoHS) should be inserted as an important reminder that Parliament already asked for concrete restrictions on PVC back in 1996.

Amendment 4

Proposal for a directive Recital 3 d (new)

Text proposed by the Commission

Amendment

(3d) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants¹ recalls that the objective of protecting the environment and human health from persistent organic pollutants cannot be sufficiently achieved by the Member States, owing to the transboundary effects of those pollutants, and can therefore be better achieved at Community level. Pursuant to that Regulation, releases of persistent organic pollutants, such as dioxins and furans, which are unintentional by-products of industrial processes, should be identified and reduced as soon as possible with the ultimate aim of elimination, where feasible. Thermal treatment or uncontrolled disposal of waste electrical and electronic equipment containing halogenated flame retardants or PVC can contribute significantly to the formation

of dioxins and furans.
¹ OJ L 158, 30.4.2004, p. 7.

Or. en

Justification

The RoHS recast needs to be put into the context of the EU's international obligations to reduce total releases of dioxins and furans, with the goal of their continuing minimization and, where feasible, ultimate elimination. The final destiny of large quantities of WEEE remains unclear. High-temperature incineration remains the exception. Sub-standard treatment of WEEE – in the EU or in third countries - risks remaining a reality for significant amounts. Emissions of dioxins and furans can only be addressed via material choices at design stage.

Amendment 5

Proposal for a directive
Recital 3 e (new)

Text proposed by the Commission

Amendment

(3e) The study commissioned by the Commission on hazardous substances in electrical and electronic equipment highly recommended a phase-out of organobromines and organochlorines due to their potential to form polybrominated and polychlorinated dioxins and furans in waste treatment operations, and gave priority to the phase-out of PVC over selective risk management options to guarantee a reduced release of PVC, of its additives and of hazardous combustion products.

Or. en

Justification

The Öko-Institut is THE reference for the Commission on RoHS. It is assessing all applications for exemptions from the phase-out in Article 4 since 2005, and continues to do so. The key findings of the relevant study by the European Commission on future restrictions (Öko-Institut, “Study on hazardous substances in Electrical and Electronic Equipment, Not Regulated by the RoHS Directive”, 17 October 2008) should therefore be referred to in the recitals.

Amendment 6

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The available evidence indicates that measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment (WEEE) as set out in Directive 2002/96/EC are necessary to reduce the waste management problems linked to the heavy metals concerned **and** the flame retardants concerned. In spite of those measures, however, significant parts of WEEE will continue to be found in the current disposal routes. Even if WEEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment.

Amendment

(4) The available evidence indicates that measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment (WEEE) as set out in Directive 2002/96/EC are necessary to reduce the waste management problems linked to the heavy metals concerned, the **halogenated** flame retardants concerned, **PVC and its hazardous plasticisers**. In spite of those measures, however, significant parts of WEEE will continue to be found in the current disposal routes. Even if WEEE were collected separately, and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment. ***The recycling of WEEE containing brominated flame retardants, chlorinated flame retardants, PVC and its hazardous plasticisers provides no environmental benefit and is uneconomical. As a result, it is subjected to thermal treatment or disposal, which is likely to pose risks to human health or the environment, either directly through release of these substances to the environment, or indirectly through the formation of hazardous transformation products or secondary hazardous waste resulting from incineration.***

Or. en

(Linked to the amendment to Annex IV)

Justification

The study by the Commission on the RoHS recast highly recommended the phase-out of organobromines, organochlorines and PVC due to the problems they create for waste treatment. The electronics industry is well-advanced in its global initiative to convert to “low-halogen” (defined as brominated/chlorinated flame retardants and PVC below 900ppm).

Similar action has already been undertaken by some manufacturers of ‘white goods’. These voluntary actions should be supported by clear requirements from the legislator to create a level playing field and provide market certainty

Amendment 7

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) This Directive supplements the general Community waste management legislation, such as Directive 2008/[...]/EC of the European Parliament and of the Council on waste.

Amendment

(8) This Directive supplements the general Community waste management legislation, such as Directive 2008/[...]/EC of the European Parliament and of the Council on waste **as well as Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)¹.**

¹ OJ L 396, 30.12.2006, p. 1.

Or. en

Justification

It should be stated specifically that RoHS supplements REACH. RoHS and REACH have different objectives, scope, timelines, and outreach. RoHS was created to address the specific problems of a fast-growing waste stream, REACH addresses chemical substances at a general level, with no special focus on waste. REACH is a regional law still in its infancy, RoHS is already setting a global standard. Key problems with WEEE are due to polymers, which are exempted from REACH. RoHS should be further developed to address the specific problems of the recovery and disposal of WEEE at the origin.

Amendment 8

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) The technical development of electrical and electronic equipment without heavy metals, **PBDE and PBB** should be taken into account.

Amendment

(11) The technical development of electrical and electronic equipment without heavy metals, **brominated flame retardants, chlorinated flame retardants, PVC and its hazardous plasticisers** should be taken into account.

Justification

The electronics industry is well-advanced in its global initiative to phase out the use of brominated/chlorinated flame retardants and PVC. Major electronics companies have already phased out the use of these substances in some/all of their products (e.g. 50% of all new mobile phones are already low halogen). Almost all major electronics companies have committed to do so for consumer products (e.g. market share of low-halogen personal computers will be at over 40% in the next 1-2 years). Similar action has already been undertaken by some manufacturers of 'white goods' in the past.

Amendment 9

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) As soon as scientific evidence is available and taking into account the precautionary principle, the prohibition of other hazardous substances and their substitution by more environmentally friendly **alternatives** which ensure at least the same level of protection of consumers should be examined, **paying** attention to coherency with other Community legislation, **and in particular to** Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Specific account should be taken of the potential impact on SMEs.

Amendment

(12) As soon as scientific evidence is available, and **in any case on a regular basis**, taking into account the precautionary principle, the prohibition of other hazardous substances and their substitution by more environmentally friendly **alternative substances or technologies** which ensure at least the same level of protection of consumers should be examined. **To this end, the Commission should study the negative impacts of other hazardous substances and the feasibility of their substitution, in particular at the end of life of electrical and electronic equipment, with a view to making legislative proposals to strengthen the provisions of this Directive on a regular basis. When doing so, the Commission should pay** attention to coherency with other Community legislation **and maximising synergies with the work carried out under** Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)¹ Specific account should be taken of the potential impact on SMEs.

Justification

RoHS 1.0 has been a global success. However, it was only a start, as a number of hazardous substances or materials continue to be used. RoHS should become a truly dynamic process that rewards companies for proactively phasing out the use of hazardous substances. To do so, a regular review of the scientific evidence about the negative impacts of certain hazardous substances and the feasibility of their substitution needs to be established.

Amendment 10

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) Exemptions from the substitution requirement should be permitted if substitution is not possible from the scientific and technical point of view, taking specific account of the situation of SMEs or if the negative environmental, health *or socio-economic* impacts caused by substitution are likely to outweigh the health, environmental *or socio-economic* benefits of the substitution *or the availability and reliability of substitutes is not ensured*. Substitution of the hazardous substances in electrical and electronic equipment should also be carried out in a way so as to be compatible with the health and safety of users of electrical and electronic equipment. The placing on the market of medical devices requires a conformity assessment procedure, according to Directives 93/42/EC and 98/79/EC, which could require the involvement of a notified body designated by Competent Authorities of Member States. If such a notified body certifies that the safety of the potential substitute for the intended use in medical devices or in vitro medical devices is not demonstrated, this will be viewed as a clear negative socio-economic, health and consumer safety impact. It should be possible to apply for exemptions of equipment coming under the scope of this Directive from the date of its entry into force, even when that is before the actual

Amendment

(13) Exemptions from the substitution requirement should be permitted if substitution is not possible from the scientific and technical point of view, taking specific account of the situation of SMEs or if the negative environmental *and* health impacts caused by substitution are likely to outweigh the health *and* environmental benefits of the substitution. Substitution of the hazardous substances in electrical and electronic equipment should also be carried out in a way so as to be compatible with the health and safety of users of electrical and electronic equipment. *Socio-economic considerations should be taken into account when deciding on the duration of an exemption. It should be possible to grant a grace period after expiry of an exemption to allow for regulatory certification or for the supply of safer substitutes to be scaled up to the necessary requirements*. The placing on the market of medical devices requires a conformity assessment procedure, according to Directives 93/42/EC and 98/79/EC, which could require the involvement of a notified body designated by Competent Authorities of Member States. If such a notified body certifies that the safety of the potential substitute for the intended use in medical devices or in vitro medical devices is not demonstrated, this will be viewed as a clear

inclusion in the scope of that equipment.

negative socio-economic, health and consumer safety impact. It should be possible to apply for exemptions of equipment coming under the scope of this Directive from the date of its entry into force, even when that is before the actual inclusion in the scope of that equipment.

Or. en

Justification

The conversion to safer alternatives may require initial investment. But once alternatives are established and their production scaled up, costs go down fast and the benefits prevail. Socio-economic considerations should therefore only be used when deciding about the duration of an exemption. Insufficient availability of substitutes should not be a yes/no criterion for an exemption, but should have an effect in the time until a prohibition is fully enacted. There is no need to introduce “reliability” as a separate criterion, as it is already covered by the safety consideration.

Amendment 11

**Proposal for a directive
Recital 14**

Text proposed by the Commission

(14) Exemptions from the prohibition for certain specific materials or components should be limited in their scope, in order to achieve a gradual phase-out of hazardous substances in electrical and electronic equipment, given that the use of those substances in such applications should become avoidable.

Amendment

(14) Exemptions from the prohibition for certain specific materials or components should be limited in their scope **and time**, in order to achieve a gradual phase-out of hazardous substances in electrical and electronic equipment, given that the use of those substances in such applications should become avoidable.

Or. en

Justification

This is to reflect Article 5(2) of the Commission proposal that limits the validity of an exemption to a maximum of four years at a time.

Amendment 12

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In particular the Commission should be empowered to adapt Annexes **II, III, IV, V** and VI to technical and scientific progress and to adopt other necessary implementing measures. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2002/95/EC, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Amendment

(20) In particular the Commission should be empowered to adapt Annexes V, VI **and VIa** to technical and scientific progress and to adopt other necessary implementing measures. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2002/95/EC, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Or. en

(Linked to the amendments of Article 2(1), Article 4(6), Annex I and Annex VIa extending the scope to an open scope (with regard to Annex II).

Linked to the amendments of Article 4 and Article 6a with regard to Annex IV)

Justification

The Commission should only be empowered to decide about exemptions in comitology (Annexes V, VI and VIa). Annex II (“binding list of products that fall under the categories listed in Annex I”) is proposed to be deleted as such, so it also needs to be deleted here. Annexes III and IV should only be modified by co-decision.

Amendment 13

Proposal for a directive Article 1

Text proposed by the Commission

This Directive lays down rules on the restriction of use of hazardous substances in electric and electronic equipment with a view to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Amendment

This Directive lays down rules on the restriction of use of hazardous substances in electric and electronic equipment with a view to contribute to the protection of human health, **the environment**, and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Justification

The subject matter should reflect the content of the recitals. Recital 4 says: “even if WEEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, would be likely to pose risk to health and the environment”. Recital 5 then states that “the most effective way of ensuring the significant reduction of risks to health and the environment relating to those substances ... is the substitution”. Thus the phase-out of hazardous substances contributes to the protection of the environment as such, not just via environmentally sound recovery and disposal.

Amendment 14

Proposal for a directive Article 2 - paragraph 1

Text proposed by the Commission

1. This Directive shall apply to electrical and electronic equipment falling under the categories set out in Annex I **as specified in Annex II** .

Amendment

1. This Directive shall apply to electrical and electronic equipment, **including cables, consumables and accessories**, falling under the categories set out in Annex I.

Or. en

(Linked to the amendments of Article 4(6), Article 5(1)(a), Annex I and Annex VIa extending the scope to an open scope)

Justification

RoHS should apply to all EEE, not just to certain categories, and include cables, consumables and accessories. Annex II is confusing: it is said to be a “binding list of products”, yet the list is not exhaustive, but only gives certain examples: “appliances, including”. This does not solve the problem of different interpretations of the categories. Annex II should be deleted, instead the general definition of EEE should apply. The categories in Annex I should be kept, completed with a catch-all category, to address different restrictions and timelines for different categories of EEE.

Amendment 15

Proposal for a directive Article 2 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Paragraph 1 shall not apply to electrical and electronic equipment that

falls into category 11 of Annex I before 1 July 2014.

Or. en

Justification

The broadening of the scope of RoHS beyond the 10 current categories requires a transitional phase to allow manufacturers to apply for exemptions.

Amendment 16

Proposal for a directive

Article 2 - paragraph 3 - point b

Text proposed by the Commission

Amendment

(b) equipment which is specifically designed as part of another type of equipment that does not fall within the scope of this Directive and can fulfill its function only if it is part of that equipment;

(b) the part of stationary installations or transport equipment that is not electrical or electronic equipment;

Or. en

Justification

Current RoHS does not have such an exclusion from the scope in the legal text. It is difficult to understand why a car radio should be excluded from the scope of RoHS, while normal radios are covered. To avoid however in this case that the whole car falls under RoHS, it should be clear that the non-electrical or non-electronic parts are not covered by it

Amendment 17

Proposal for a directive

Article 2 - paragraph 3 - point c

Text proposed by the Commission

Amendment

(c) equipment which is not intended to be placed on the market as a single functional or commercial unit. *deleted*

Or. en

Justification

Current RoHS does not have such an exclusion from the scope. RoHS only applies to EEE placed on the market (Art. 4(1)). Adding such an exclusion would create unclarity with regard

to the scope of RoHS.

Amendment 17

Proposal for a directive Article 3 - point b

Text proposed by the Commission

(b) "manufacturer" means any natural or legal person who manufactures **an** EEE or who has **an** EEE designed or manufactured under his name or trademark;

Amendment

(b) "manufacturer" means any natural or legal person who manufactures EEE or who has EEE designed or manufactured, **and markets** it under his name or trademark;

Or. en *Justification*

This is a clarification of the definition of a manufacturer in line with the discussions in Council.

Amendment 18

Proposal for a directive Article 3 - point d a (new)

Text proposed by the Commission

Amendment

(da) "economic operators" mean the manufacturer, the authorised representative, the importer and the distributor;

Or. en

Justification

The term 'economic operators' is used in several places in the directive. The same definition as given in Decision 768/2008/EC on a common framework for the marketing of products should apply.

Amendment 19

Proposal for a directive Article 3 - point g a (new)

Text proposed by the Commission

Amendment

(ga) "technical specification" means a document that prescribes technical

**requirements to be fulfilled by a product,
process or service;**

Or. en

Justification

The term 'technical specification' is used in several places in the directive. The same definition as given in Decision 768/2008/EC on a common framework for the marketing of products should apply.

Amendment 20

**Proposal for a directive
Article 3 - point k a (new)**

Text proposed by the Commission

Amendment

(ka) "recall" means any measure aimed at achieving the return of a product that has already been made available to the end user;

Or. en

Justification

The term 'recall' is used in several places in the directive. The same definition as given in Decision 768/2008/EC on a common framework for the marketing of products should apply.

Amendment 21

**Proposal for a directive
Article 3 - point k b (new)**

Text proposed by the Commission

Amendment

(kb) "withdrawal" means any measure aimed at preventing a product in the supply chain from being made available on the market;

Or. en

Justification

The term 'withdrawal' is used in several places in the directive. The same definition as given in Decision 768/2008/EC on a common framework for the marketing of products should apply.

Amendment 22

Proposal for a directive Article 3 - point 1

Text proposed by the Commission

(1) “homogeneous material” means a material **of uniform composition** throughout that can not be mechanically disjointed into different materials, **meaning that the materials can not, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding and abrasive processes;**

Amendment

(1) “homogeneous material” means **either:**
- a material **that consists of only one material** throughout;

- **a combination of multiple materials** that can not be mechanically disjointed into different materials, **excluding surface coatings; or**
- **a surface coating.**

Or. en

(Linked to the amendment to Article 3(la) new)

Justification

A distinction needs to be made between materials that consist of only one material throughout and those consisting of multiple materials that cannot be mechanically disjointed. Surface coatings should be considered as a homogenous material in their own right.

Amendment 23

Proposal for a directive Article 3 - point 1 a (new)

Text proposed by the Commission

Amendment

(1a) “disjoint mechanically” means the separation of multi-component materials by mechanical actions such as unscrewing, cutting, crushing, grinding and abrasive processes;

Or. en

Linked to the amendment to Article 3(1).

Justification

A separate definition of “disjoint mechanically” should be given.

Amendment 24

Proposal for a directive

Article 3 - point p

Text proposed by the Commission

(p) “industrial monitoring and control instruments” mean monitoring and control instruments designed for exclusively industrial **or professional** use.

Amendment

(p) “industrial monitoring and control instruments” mean monitoring and control instruments designed for exclusively industrial use.

Or. en

Justification

Community legislation normally distinguishes between the use by the general public, by professionals or within industry. The distinction between the general public and professionals differs from Member State to Member State. The distinction is furthermore blurred, as persons of the general public can have access to professional products, while professionals may use products widely available to the general public. To avoid further confusion, the definition of industrial monitoring and control instruments should be limited to exclusively “industrial use”.

Amendment 25

Proposal for a directive

Article 3 - point p a (new)

Text proposed by the Commission

Amendment

(pa) “consumable” means any unit used with the EEE where the EEE cannot function as intended without the consumable.

Or. en

Justification

RoHS lays down rules to contribute to the protection of human health. Consumables containing hazardous substances might endanger human health during use of EEE or jeopardize the environmentally sound recovery and disposal of WEEE. Consumables are for example tapes, CDs, DVDs, toner cartridges or lamps (e.g. in fridges). The RoHS restrictions

should also apply for consumables. A definition should therefore be included.

Amendment 26

Proposal for a directive Article 3 - point p b (new)

Text proposed by the Commission

Amendment

(pb) “accessory” means any unit used with the EEE that cannot function without the EEE.

Or. en

Justification

RoHS should also include accessories. A definition should therefore be included.

Amendment 27

Proposal for a directive Article 4 - paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that, EEE including spare parts for its repair or its reuse placed on the market does not contain the substances listed in Annex IV.

1. Member States shall ensure that, EEE including spare parts for its repair or its reuse, ***updating of functionalities or upgrading of capacity*** placed on the market does not contain the substances listed in Annex IV, ***Part A***.

Or. en

Justification

The directive should also apply to parts for updating of functionalities or upgrading of capacity. A sub-division of Annex IV is needed to allow for a timeline in the future for new restrictions.

Amendment 28

**Proposal for a directive
Article 4 - paragraph 1 a (new)**

Text proposed by the Commission

Amendment

***1a. Member States shall ensure that
EEE including spare parts for its repair
or its reuse, updating of functionalities or
upgrading of capacity placed on the
market does not contain the substances
listed in Annex IV, Part B.***

Or. en

Justification

A sub-division of Annex IV is needed to allow for a timeline in the future for new restrictions.

Amendment 29

**Proposal for a directive
Article 4 - paragraph 4 - introductory part**

Text proposed by the Commission

Amendment

4. Paragraph 1 shall not apply to spare parts for the repair or to the reuse of the following:

4. Paragraph 1 shall not apply to spare parts for the repair or to the reuse, ***updating of functionalities or upgrading of capacity***, of the following::

Or. en

(Linked to the amendment on Article 4(1))

Justification

If the general scope is extended to apply to parts for updating of functionalities or upgrading of capacity, this needs to be reflected in the corresponding exemption.

Amendment 30

Proposal for a directive Article 4 - paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Without prejudice to Article 6, paragraph 1a shall apply to EEE falling under the categories 1, 2, 3, 4, 5, 6, 7, 10 set out in Annex I which are placed on the market from [...*]

*** insert date 42 months after entry into force.**

Or. en

Justification

The new restrictions on halogenated substances and materials should initially only apply to certain categories of EEE and with an adequate transition time. In analogy to RoHS 1.0, the new restrictions should apply to categories 1-7 and 10 within 3.5 years after entry into force. Companies selling EEE of categories 3 and 4 are working to end the use of the relevant halogenated substances by 2012 at the latest. It should thus be possible for manufacturers of other EEE to achieve a similar phase out in 2014, while giving them time to apply for exemptions according to Article 5.

Amendment 31

Proposal for a directive Article 4 - paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Paragraph 1a shall not apply to spare parts for the repair or to the reuse, updating of functionalities or upgrading of capacity of the following:

(a) EEE placed on the market before [...*],

(b) EEE which benefits from an exemption and was placed on the market before that exemption expired.

*** insert date 42 months after entry into force.**

Or. en

Justification

The exemption for spare parts for EEE placed on the market before the application of the new restrictions or for EEE which benefits from an exemption and was placed on the market before that exemption expired should apply in analogy for the new restrictions.

Amendment 32

Proposal for a directive Article 4 - paragraph 6

Text proposed by the Commission

6. Paragraph 1 shall not apply to the applications listed in Annexes V **and** VI .

Amendment

6. Paragraph 1 shall not apply to the applications listed in Annexes V, VI **and VIa**.

Or. en

(Linked to the amendments of Article 2(1), Annex I and Annex VIa extending the scope to an open scope)

Justification

The introduction of an open scope requires a separate Annex to allow for applications exempted from the ban in Article 4(1) for EEE that were currently not in the scope of RoHS as not falling under any of the 10 first categories.

Amendment 33

Proposal for a directive Article 4 - paragraph 7

Text proposed by the Commission

7. When there is an unacceptable risk to human health or the environment, arising from the use of substances, and in particular the substances listed in Annex III, which needs to be addressed on a Community-wide basis, the list of prohibited substances in Annex IV shall be reviewed using a methodology based on the process set out in Articles 69 to 72 of Regulation (EC) No 1907/2006. Those measures designed to amend non essential elements of this Directive shall be adopted

Amendment

deleted

in accordance with the regulatory procedure with scrutiny referred to in Article 18(2)

Or. en

(Linked to the amendment reinstating Article 6 of RoHS in a modified form)

Justification

RoHS is a one-issue directive: restricting hazardous substances in EEE. It is not acceptable to delegate the power for decisions on the very essence of RoHS to comitology, let alone to a methodology in comitology which is yet to be defined, all the more that the legislator clearly mandated the Commission to make such proposals in co-decision (Art. 6). And doing so would mean no new restrictions now, which is against the recommendations by the Commission study. To maintain the driving force of RoHS, new restrictions need to be adopted now, and not put off to an undefined time in the future.

Amendment 34

**Proposal for a directive
Article 5 - paragraph 1**

Text proposed by the Commission

Amendment

1. The Commission shall, for the purposes of adapting the **annexes** to scientific and technical progress, adopt the following measures:

1. The Commission shall, for the purposes of adapting **Annexes V, VI and VIa** to scientific and technical progress, adopt the following measures:

Or. en

Justification

The Commission should only be empowered to adapt the exemptions to scientific and technical progress in comitology.

Amendment 35

**Proposal for a directive
Article 5 - paragraph 1 - point a**

Text proposed by the Commission

Amendment

(a) any necessary amendments to Annex II. ***deleted***

Or. en

(Linked to the amendments of Article 2(1), Article 4(6), Annex I and Annex VIa extending the scope to an open scope)

Justification

If Annex II is deleted, there is no need to amend it in comitology

Amendment 36

Proposal for a directive

Article 5 - paragraph 1 - point b

Text proposed by the Commission

Amendment

(b) Include materials and components of EEE in Annexes V **and** VI where either of the following conditions is fulfilled:

(b) Include materials and components of EEE **for specific applications** in Annexes V, VI **and VIa** where either of the following conditions is fulfilled:

Or. en

Justification

The scope of the exemptions should be as specific as possible. The introduction of an open scope requires a separate Annex to allow for applications exempted from the ban in Article 4(1) for EEE that were currently not in the scope of RoHS as not falling under any of the 10 first categories.

Amendment 37

Proposal for a directive

Article 5 - paragraph 1 - point b - indent 2

Text proposed by the Commission

Amendment

– ***the availability and reliability of substitutes is not ensured,***

deleted

Or. en

Justification

Insufficient availability of substitutes should not be a yes/no criterion for an exemption. As it is possible to renew exemptions, companies offering substitutes might not invest in scaling up production, as the market situation is unclear. Insufficient availability of substitutes should lead to transitional periods between expiry of an exemption and actual end of an exemption to allow time for the necessary scaling up of production. There is no need to introduce “reliability” as a separate criterion, as it is already covered by the safety considerations in

the third indent.

Amendment 38

Proposal for a directive

Article 5 - paragraph 1 - point b - indent 3

Text proposed by the Commission

– the negative environmental health consumer safety **or socio-economic** impacts caused by substitution are likely to outweigh the environmental, health **or** consumer safety **and/or socio-economic** benefits thereof;

Amendment

– the negative environmental health consumer safety impacts caused by substitution are likely to outweigh the environmental, health **and** consumer safety benefits thereof **based on a life-cycle assessment where relevant**;

Or. en

Justification

It is established EC policy to phase out heavy metals wherever possible, accepting related costs and efforts. Introducing socio-economic aspects as a possible justification for exemptions would put an end to this policy. Moreover, such aspects are very difficult to examine, let alone verify. As all innovation, the conversion to safer alternatives requires investment. But once alternatives are established and production scaled up, costs go down fast and the benefits prevail. Socio-economic considerations should only be used in decisions about the duration of an exemption.

Amendment 39

Proposal for a directive

Article 5 - paragraph 1 – subparagraph 2

Text proposed by the Commission

Those measures designed to amend non essential elements of this directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(2).

Amendment

Those measures designed to amend non essential elements of this directive shall be adopted **individually and** in accordance with the regulatory procedure with scrutiny referred to in Article 18(2).

Or. en

Justification

The Commission currently puts different proposals for exemptions into one package. The package is discussed as a whole in comitology. As such, decisions about exemptions - which

are in substance completely independent from each other – get linked to each other, and thus risk becoming political or subject to false compromises. Exemptions – and deletions of exemptions – should each be decided based on their own merit and not linked to other exemptions.

Amendment 40

Proposal for a directive

Article 5 - paragraph 1 - subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Notwithstanding the inclusion of materials and components in Annex V, VI or VIa, economic operators shall take all measures necessary to reduce exposure to the substances listed in Annex IV in materials and components of EEE for consumers, workers and the environment to as low a level as is technically and practically possible.

Or. en

Justification

It needs to be clearly stated that an exemption from the prohibition in Article 4 does not absolve economic operators from the obligation to reduce exposure to these substances over the entire life cycle. The same obligation also applies to substances of very high concern that were granted an authorisation under REACH (Article 60(10)).

Amendment 41

Proposal for a directive

Article 5 - paragraph 2

Text proposed by the Commission

Amendment

2. Measures adopted in accordance with point b of paragraph 1 shall have a **maximum** validity period of four years and may be renewed. The Commission shall decide **in due time** on any application for renewal that is submitted no later than 18 months before an exemption expires.

2. Measures adopted in accordance with point b of paragraph 1 shall have a validity period of **up to** four years, **to be decided on a case-by-case basis**, and may be renewed. **The Commission shall take into account socio-economic impacts when deciding on the duration of an exemption.** The Commission shall decide **no later than six months before an exemption expires** on

any application for renewal that is submitted no later than 18 months before an exemption expires. *Where the Commission considers that more than the time until expiry of the exemption is necessary for regulatory certification procedures or to ensure adequate availability of substitutes, it shall grant a grace period after expiry of the exemption. The duration of the grace period shall be decided on a case-by-case basis and shall not exceed 18 months after expiry of the exemption. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(2).*

Or. en

Justification

Economic operators request legal certainty about the renewal or not of an exemption. Therefore, the Commission should have a deadline for its decisions. To allow for proper adaptation after the expiry of the exemption (e.g. for certification procedures, sufficient availability of substitutes), a grace period of up to 18 months may be granted. This results in a transitional period of up to 24 months which would grant economic operators in their own view enough time to adapt. Socio-economic considerations shall be taken into account when deciding about the duration of an exemption.

Amendment 42

Proposal for a directive Article 5 - paragraph 3

Text proposed by the Commission

3. Before Annexes are amended, the Commission shall inter alia consult ***producers of electrical and electronic equipment***, recyclers, treatment operators, environmental organisations and employee and consumer associations.

Amendment

3. Before Annexes ***V, VI and VIa*** are amended, the Commission shall inter alia consult ***economic operators***, recyclers, treatment operators, environmental organisations and employee and consumer associations. ***Comments received by the Commission in the context of such consultations shall be made publicly available and forwarded to the Committee referred to in Article 18(1). The***

Commission shall provide an account of the information it receives and make it publicly available.

Or. en

Justification

It should be specified which Annexes the Commission can amend in comitology. The term economic operators should be used in line with the change of the definitions. The last part reinstates the provisions of RoHS 1.0 in a modified form, codifying the current practice of public stakeholder consultations.

Amendment 43

**Proposal for a directive
Article 5 - paragraph 4**

Text proposed by the Commission

Amendment

4. As long as materials or components are included in Annexes V and VI to this Directive, on the basis of Article 5(1)(b) of this Directive, those applications shall also be considered exempted from the authorisation requirements set out in Article 58(2) of the regulation (EC) No 1907/2006. ***deleted***

Or. en

Justification

REACH and RoHS take different approaches to restricting chemicals. They should be complementing each other. Therefore, materials or components included in Annexes V and VI (and VIa) should not be exempted from authorisation requirements under REACH.

Amendment 44

**Proposal for a directive
Article 6 - paragraph 1 - introductory part**

Text proposed by the Commission

Amendment

The Commission shall adopt detailed rules for:

No later than [...*], the Commission shall adopt detailed rules for:

**** insert date eighteen months after entry***

into force of this Directive.

Or. en

Justification

To ensure legal certainty for economic operators, the relevant implementing measures should be adopted no later than the time by when the new provisions apply.

Amendment 45

Proposal for a directive

Article 6 - paragraph 1 - indent 1

Text proposed by the Commission

Amendment

- applications for the exemption including a format and types of information to be provided when introducing those applications, including analysis of the alternatives and, if suitable alternatives are available, substitution plans as referred to in Regulation (EC) 1907/2006.

- applications for the exemption including a format and types of **verifiable** information to be provided **and comprehensive guidance** when introducing those applications, including analysis of the alternatives **on a life-cycle basis** and, if suitable alternatives are available, substitution plans as referred to in Regulation (EC) 1907/2006, **including transition times necessary for regulatory certification and sufficient supply of suitable alternatives.**

Or. en

Justification

Applicants have the burden of proof when requesting an exemption. The detailed rules to be adopted by the Commission need to request documentation and information which is uniform for all, assessable and verifiable. Applicants should have comprehensive guidance. In line with the introduction of the possibility of a grace period after expiry of an exemption to grant sufficient time for certification procedures and adaptation of the supply of alternatives, the relevant information should be provided with the application for exemptions.

Amendment 46

Proposal for a directive

Article 6 - paragraph 1 - indent 2

Text proposed by the Commission

- Complying with the maximum concentration values of Article (4)(2)

Amendment

- Complying with the maximum concentration values of Article (4)(2), ***inter alia by defining a de minimis volume, and specific rules for surface coatings. Verification procedures for the prohibition of chlorinated and brominated substances shall be based on existing international industry standards referring to bromine and/or chlorine content.***

Or. en

Justification

The introduction of a de minimus volume would help compliance testing of the maximum concentration. There need to be specific rules for how to implement the restrictions for coatings, as the treated surface area may be a better reference than the volume. Compliance testing of low-halogen EEE would be easier and cheaper if a first check was based on content of bromine/chlorine, rather than on content of certain halogenated compounds. There are already numerous international standards that apply this approach (e.g. IPC-4101 for laminates of PCBs, IEC 61249 for printed boards).

Amendment 47

Proposal for a directive

Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Review

Before [...*], the Commission shall review the measures provided for in this Directive to take into account, as necessary, new scientific evidence. In particular the Commission shall, by that date, present proposals for subjecting equipment which falls under categories 8, 9 and 11 to Article 4(1a). The Commission shall also study, by that

date, and every four years thereafter, the need to extend the list of substances or groups of substances in Annex IV, in particular with regard to the substances listed in Annex III, on the basis of scientific facts and taking the precautionary principle into account. Particular attention shall be paid during that review to the following impacts of such substances or materials:

- the feasibility and profitability of reuse and recycling;*
- the cumulative exposure of workers involved in the collection, reuse, recycling and treatment;*
- the potential for release of those substances and materials or their hazardous transformation products or secondary wastes to the environment during recovery or disposal, including during sub-standard operations in the EU and in third countries, in particular thermal treatment processes.*

The Commission shall examine the feasibility of replacing such substances and materials with safer substitutes and shall present proposals to the European Parliament and to the Council by that date, and every four years thereafter, in order to extend the scope of Annex IV, as appropriate.

** insert date four years after entry into force of the Directive*

Or. en

Justification

RoHS is a one-issue directive: restricting hazardous substances in EEE. RoHS was adopted in co-decision. Future restrictions should continue to be adopted in co-decision. The Directive should lay down clear criteria for future reviews. These should include economic impacts on reuse and recycling, exposure to workers and releases to the environment, including the release of transformation products (such as e.g. dioxins) or the formation of secondary waste (e.g. hazardous waste created as a result of incineration). Reviews should occur every four years.

Amendment 48

Proposal for a directive Article 6 b (new)

Text proposed by the Commission

Amendment

Article 6b

Adaptation to REACH

Where Regulation (EC) No 1907/2006 adopts new restrictions or non-authorisations with regard to hazardous substances in EEE, the relevant Annexes of this Directive shall be amended accordingly.

Those measures, designed to amend non essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(2).

Or. en

Justification

A mechanism needs to be introduced to allow that restrictions or phase-outs under authorisation as adopted under REACH are carried over into RoHS.

Amendment 49

Proposal for a directive Article 7 - introductory part (new)

Text proposed by the Commission

Amendment

Member States shall ensure that:
(This amendment will necessitate consequential changes throughout the article; paragraphs will become points and their grammatical structure will have to be adapted accordingly.)

Or. en

(This also applies for articles 8, 9 and 10)

Justification

This is a correction of a drafting error in the Commission proposal. A directive cannot directly establish obligations on economic operators. It can only establish obligations on Member States to ensure that economic operators take certain action.

Amendment 50

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

2. Manufacturers shall draw up the required technical documentation and carry out the internal production control procedure set out in module A of Annex II to Decision No 768/2008/EC or have it carried out.

Where compliance of an EEE with the applicable requirements has been demonstrated by **that procedure**, manufacturers shall draw up an EC declaration of conformity and affix the CE marking.

Amendment

2. Manufacturers shall draw up the required technical documentation and carry out the internal production control procedure set out in module A of Annex II to Decision No 768/2008/EC or have it carried out, **unless specific legislation requires technical documentation and internal control procedures that are at least as strict as the procedure set out in that module.**

Where compliance of an EEE with the applicable requirements has been demonstrated by **those procedures**, manufacturers shall draw up an EC declaration of conformity and affix the CE marking.

Or. en

Justification

Where comparable legislation already applies (e.g. for medical devices), and where it contains at least the elements specified in Annex VII, it should be acceptable to provide the declaration of conformity pursuant to that legislation to avoid double bureaucracy.

Amendment 51

Proposal for a directive Article 7 – paragraph 5

Text proposed by the Commission

5. When deemed appropriate with regard to the risks presented by a product,

Amendment

5. When deemed appropriate with regard to the risks **to human health, the**

manufacturers shall, ***to protect the health and safety of consumers***, carry out sample testing of marketed EEE, investigate, and, if necessary, keep a register of complaints, of non-conforming EEE and product recalls, and shall keep distributors informed of any such monitoring.

environment or environmentally sound recovery and disposal presented by a product, manufacturers shall carry out sample testing of marketed EEE, investigate, and, if necessary, keep a register of complaints, of non-conforming EEE and product recalls, and shall keep distributors informed of any such monitoring.

Or. en

Justification

RoHS has been adopted to address the risks to human health and the environment, in particular during end-of-life, due to the use of certain hazardous substances or materials in EEE. This should be reflected in the wording of this article.

Amendment 52

Proposal for a directive Article 7 – paragraph 7

Text proposed by the Commission

7. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE. The address must indicate a single point at which the manufacturer can be contacted.

Amendment

7. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE. ***Where specific applicable legislation already sets out such requirements, the requirements in that legislation shall apply instead.*** The address must indicate a single point at which the manufacturer can be contacted.

Or. en

Justification

Where comparable legislation already applies (e.g. for medical devices), the provisions of that legislation should apply.

Amendment 53

Proposal for a directive Article 7 - paragraph 8

Text proposed by the Commission

8. Manufacturers who consider or have reason to believe that an EEE which they have placed on the market is not in conformity with ***the applicable Community harmonisation legislation shall*** immediately take the necessary corrective measures to bring that EEE into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the EEE presents a risk, manufacturers ***shall*** immediately inform the competent national authorities of the Member States in which they made the EEE available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

Amendment

8. Manufacturers who consider or have reason to believe that an EEE which they have placed on the market is not in conformity with ***this Directive*** immediately take the necessary corrective measures to bring that EEE into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the EEE presents a risk, manufacturers immediately inform the competent national authorities of the Member States in which they made the EEE available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

Or. en

Justification

The reference for conformity should be this Directive, which includes relevant references to Community harmonisation legislation, and not just the latter. The deletion of 'shall' follows from the correction of a drafting error by the Commission (see amendment 49. A directive cannot directly establish obligations on economic operators. It can only establish obligations on Member States to ensure that economic operators take certain action.

Amendment 54

Proposal for a directive Article 8 - paragraph 1

Text proposed by the Commission

1. A manufacturer ***may, by a written mandate,*** appoint an authorised representative.
The obligations laid down in Article 7(1) and the drawing up of technical documentation shall not form part of the authorised representative's mandate

Amendment

1. A manufacturer ***has the possibility to*** appoint an authorised representative ***by written mandate.***
The obligations laid down in Article 7(1) and the drawing up of technical documentation shall not form part of the

authorised representative's mandate

Or. en

Justification

Change in the wording as a consequence of the new introductory part (see amendment 49).

Amendment 55

**Proposal for a directive
Article 8 - paragraph 2 - point a**

Text proposed by the Commission

(a) keep the EC declaration of conformity and the technical documentation at the disposal of national surveillance authorities for ten years;

Amendment

(a) keep the EC declaration of conformity and the technical documentation at the disposal of national surveillance authorities for ten years ***after the EEE has last been made available on the market by the manufacturer or importer;***

Or. en

Justification

The ten-year timeline needs a clear starting point.

Amendment 56

**Proposal for a directive
Article 9 - paragraph 3**

Text proposed by the Commission

3. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE.

Amendment

3. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE. ***Where specific applicable legislation already sets out such requirements, the requirements in that legislation shall apply instead.***

Or. en

Justification

Where comparable legislation already applies (e.g. for medical devices), the provisions of that legislation should apply.

Amendment 57

Proposal for a directive Article 9 – paragraph 5

Text proposed by the Commission

5. When deemed appropriate with regard to the risks presented by an EEE, importers shall, ***to protect the health and safety of consumers***, carry out sample testing of marketed EEE, investigate, and, if necessary, keep a register of complaints, of non-conforming EEE and EEE recalls, and shall keep distributors informed of such monitoring.

Amendment

5. When deemed appropriate with regard to the risks ***to human health, the environment or environmentally sound recovery and disposal*** presented by an EEE, importers shall carry out sample testing of marketed EEE, investigate, and, if necessary, keep a register of complaints, of non-conforming EEE and EEE recalls, and shall keep distributors informed of such monitoring.

Or. en

Justification

RoHS has been adopted to address the risks to human health and the environment, in particular during end-of life, due to the use of certain hazardous substances or materials in EEE. This should be reflected in the wording of this article.

Amendment 58

Proposal for a directive Article 9 - paragraph 7

Text proposed by the Commission

7. Importers ***shall***, for ten years, ***keep*** a copy of the EC declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

Amendment

7. Importers ***keep***, for ten years ***after the EEE has last been made available on the market***, a copy of the EC declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

Or. en

Justification

The ten-year timeline needs a clear starting point.

Amendment 59

Proposal for a directive

Article 10 - paragraph 2 - first subparagraph

Text proposed by the Commission

2. Before making an EEE available on the market distributors **shall** verify that the EEE bears the CE marking, that it is accompanied by the required documents in a language which can be easily understood by consumers and other end-users in the Member State in which the EEE is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Article 7(5) **and** (6) and Article 9(3).

Amendment

2. Before making EEE available on the market distributors verify that the EEE bears the CE marking, that it is accompanied by the required documents in a language which can be easily understood by consumers and other end-users in the Member State in which the EEE is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Article 7(6) **and** (7) and Article 9(3).

Or. en

Justification

This is a correction of an error in the Commission proposal.

Amendment 60

Proposal for a directive

Article 11

Text proposed by the Commission

An importer or distributor **shall be** considered a manufacturer for the purposes of this Directive and he **shall be** subject to the obligations of the manufacturer under Article 7, where he places an EEE on the market under his name or trademark or modifies an EEE already placed on the market in such a way that compliance with the applicable requirements may be affected.

Amendment

Member States shall ensure that an importer or distributor **is** considered a manufacturer for the purposes of this Directive and **that** he **is** subject to the obligations of the manufacturer under Article 7, where he places an EEE on the market under his name or trademark or modifies EEE already placed on the market in such a way that compliance with the applicable requirements may be affected.

Justification

This is a correction of a drafting error in the Commission proposal (see amendment 49). A directive cannot directly establish obligations on economic operators. It can only establish obligations on Member States to ensure that economic operators take certain action.

Amendment 61**Proposal for a directive
Article 12***Text proposed by the Commission*

Economic operators shall, on request, identify the following to the market surveillance authorities, for ten years:

Amendment

Member States shall ensure that economic operators, on request, identify the following to the market surveillance authorities, for ten years

Justification

This is a correction of a drafting error in the Commission proposal (see amendment 49). A directive cannot directly establish obligations on economic operators. It can only establish obligations on Member States to ensure that economic operators take certain action.

Amendment 62**Proposal for a directive
Article 13 - paragraph 2***Text proposed by the Commission*

2. The EC declaration of conformity shall have the model structure and shall contain the elements specified in Annex VII and shall be updated.

Amendment

2. The EC declaration of conformity shall have the model structure and shall contain the elements specified in Annex VII and shall be updated, ***unless specific legislation requiring a declaration of conformity that contains at least the elements specified in Annex VII applies. It shall be translated into the language or languages required by the Member State in which market the product is placed or made available on the market by a manufacturer, importer or distributor.***

Justification

Where comparable legislation already applies (e.g. for medical devices), and where it contains at least the elements specified in Annex VII, it should be acceptable to provide that declaration of conformity to avoid double bureaucracy. The EC declaration of conformity shall be available in the respective official languages of each Member State in which the EEE is placed on the market or made available on the market.

Amendment 63**Proposal for a directive
Article 15 - paragraph 3***Text proposed by the Commission**Amendment*

3. The CE marking shall be followed by the identification number of the notified body, where that body is involved in the production control phase..

deleted

The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or his authorised representative

Justification

This is a correction of an error in the Commission proposal. There are no notified bodies for RoHS.

Amendment 64**Proposal for a directive
Article 16 – second subparagraph***Text proposed by the Commission**Amendment*

Electrical and electronic equipment on which tests and measurements have been performed in accordance with harmonised standards, the references of which have been published in the Official Journal of the European Union, shall be presumed to

Materials, components, and electrical and electronic equipment which have passed tests or measurements in accordance with harmonised standards, the references of which have been published in the Official Journal of the European Union, shall be

comply with all the relevant requirements of this Directive to which such standards relate.

presumed to comply with all the relevant requirements of this Directive to which such standards relate.

Or. en

Justification

It should be possible to show compliance with the requirements at the relevant levels (materials, components, or whole product). When such tests or measurements are conducted, compliance can only be presumed when the relevant parts have actually passed the tests/measurements. Performing a test in accordance with the standards alone does not automatically mean that the test has been passed.

Amendment 65

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Formal objection to a harmonised standard

- 1. When a Member State or the Commission considers that a harmonised standard does not entirely satisfy the requirements which it covers and which are set out in [Article 4], the Commission or the Member State concerned shall bring the matter before the Committee set up by Article 5 of Directive 98/34/EC, giving its arguments. The Committee shall, having consulted the relevant European standardisation bodies, deliver its opinion without delay.***
- 2. In the light of the Committee's opinion, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the harmonised standard concerned in or from the Official Journal of the European Union..***
- 3. The Commission shall inform the European standardisation body concerned and, if necessary, request the revision of the harmonised standards concerned***

Justification

This is an exact copy of Article R9 of Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products. In line with that legislative framework, it should be possible for a Member State or the Commission to formally object to a harmonized standard.

Amendment 66**Proposal for a directive
Article 20 - paragraph 1***Text proposed by the Commission*

Member States shall adopt and publish, by at the latest [18 month after this Directive's publication in the Official Journal of the European Union], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
They shall apply those provisions from [...].

Amendment

Member States shall adopt and publish, by at the latest [18 month after this Directive's publication in the Official Journal of the European Union], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
They shall apply those provisions from [...*].
** insert date 18 months after this Directive's publication in the Official Journal of the European Union*

Justification

The Commission did not specify when the provisions shall apply, as they wanted to leave this open to the legislator. In their views, there is no need to defer the application of the measures beyond the date of transposition into national law. It is therefore proposed that Member States shall apply the provisions from 18 months after publication of the Directive.

Amendment 67

Proposal for a directive Annex I

Text proposed by the Commission

Categories of electrical and electronic equipment covered by this Directive

1. Large household appliances
2. Small household appliances
3. IT and telecommunications equipment
4. Consumer equipment
5. Lighting equipment
6. Electrical and electronic tools (*with the exception of large-scale stationary industrial tools*)
7. Toys, leisure and sports equipment
8. Medical devices
9. Monitoring and control instruments including industrial monitoring and control instruments
10. Automatic dispensers

Amendment

Categories of electrical and electronic equipment covered by this Directive

1. Large household appliances
2. Small household appliances
3. IT and telecommunications equipment
4. Consumer equipment
5. Lighting equipment
6. Electrical and electronic tools

7. Toys, leisure and sports equipment
8. Medical devices.
9. Monitoring and control instruments including industrial monitoring and control instruments
10. Automatic dispensers
- 11. Other electrical and electronic equipment not covered by any of the categories above**

Or. en

Justification

It is difficult to see why large scale industrial tools should be excluded from the scope, given that monitoring and control instruments including industrial ones are included. In light of the different scope of restrictions and corresponding timelines applicable for different categories of EEE, a list of categories of EEE should be maintained, but completed by a category that catches all EEE that is not covered by any of the current ten categories. This would ensure an open scope without losing the possibility to differentiate between different categories.

Amendment 68

Proposal for a directive Annex II

Text proposed by the Commission

Amendment

Annex deleted

Or. en

Justification

RoHS should apply to all EEE, not just to certain categories. Annex II is very confusing: it is meant to be a "binding list of products", yet the list is not exhaustive, but only gives certain examples: "...appliances, including". This does not solve the problem of different interpretations of these categories. Annex II should be deleted, instead the general definition of EEE should apply.

Amendment 69

Proposal for a directive Annex III

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Substances referred to in Article 4(7)	Substances referred to in Article 6a
1. Hexabromocyclododecane (HBCDD)	1. Arsenic compounds
2. Bis (2-ethylhexyl) phthalate (DEHP)	2. Beryllium and its compounds
3. Butyl benzyl phthalate (BBP)	3. Antimony trioxide
4. Dibutylphthalate (DBP)	4. Dinickeltrioxide
	5. Bisphenol A
	6. Organobromines other than brominated flame retardants
	7. Organochlorines other than chlorinated flame retardants or plasticisers

Or. en

Justification

The study commissioned by the Commission identified a series of 'high priority hazardous substances in EEE' that have the 'potential to cause severe harm to humans and the environment'. These include the substances 1-5 above. For these, the study recommended labelling or "currently no action necessary". For organobromines and organochlorines, the study recommended a phase out of the whole group. The next review should assess in particular these high-priority substances as well as the organobromines and organochlorines that are not yet proposed to be added to Annex IV.

Amendment 70

Proposal for a directive Annex IV

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Prohibited substances referred to in Article 4(7) and maximum concentration values tolerated by weight in homogeneous materials	Prohibited substances referred to in Article 4(7) and maximum concentration values tolerated by weight in homogeneous materials
Lead (0,1%)	<i>Part A</i> Lead (0,1%)
Mercury (0,1%)	Mercury (0,1%)
Cadmium (0,01%)	Cadmium (0,01%)
Hexavalent chromium (0,1%)	Hexavalent chromium (0,1%)
Polybrominated biphenyls (PBB) (0,1%)	Polybrominated biphenyls (PBB) (0,1%)
Polybrominated diphenyl ethers(PBDE) (0,1%)	Polybrominated diphenyl ethers(PBDE) (0,1%)
	<i>Part B</i>
	<i>Brominated flame retardants (0,1 %)</i>
	<i>Chlorinated flame retardants (0,1 %)</i>
	<i>Polyvinylchloride (PVC) (0,1 %)</i>
	<i>Chlorinated plasticisers (0,1 %)</i>
	<i>Bis (2-ethylhexyl) phthalate (DEHP) (0,1%)</i>
	<i>Butyl benzyl phthalate (BBP) (0,1 %)</i>
	<i>Dibutylphthalate (DBP) (0,1 %)</i>

Or. en

Justification

The study by the European Commission on the RoHS recast recommended the phase-out of organobromines, organochlorines and PVC due to the problems they create for waste treatment. The electronics industry is well-advanced in its global initiative to convert to “low-halogen” (defined as brominated/chlorinated flame retardants/PVC below 900ppm). Similar

action has already been undertaken by some manufacturers of ‘white goods’. These voluntary actions should be supported by clear requirements from the legislator to create a level playing field and provide market certainty.

Amendment 71

Proposal for a directive Annex V – introductory paragraph (new)

Text proposed by the Commission

Amendment

***Unless stated differently, the applications
in this Annex shall expire on [...*]
* insert date 48 months after entry into force***

Or. en

Justification

The expiry date for applications exempted from the ban in Article 4(1) should be clearly specified to avoid any misunderstandings as to the exact date of expiry.

Amendment 72

Proposal for a directive Annex VI – introductory paragraph (new)

Text proposed by the Commission

Amendment

***Unless stated differently, the applications
in this Annex shall expire four years after
the dates referred to in Article 4(3).***

Or. en

Justification

The expiry date for applications exempted from the ban in Article 4(1) should be clearly specified to avoid any misunderstandings as to the exact date of expiry. Given that different sub-categories of products in the categories 8 and 9 are phased into the directive at different times, the dates indicated in Article 4(3) should serve as reference.

Amendment 73

Proposal for a directive Annex VI a (new)

Text proposed by the Commission

Amendment

Annex VIa

*Applications exempted from the ban in Article 4(1) as regards Category 11
Unless stated differently, the applications in this Annex shall expire four years after the date referred to in Article 2(1a).*

1. Cadmium in thin-film photovoltaic panels based on cadmium telluride

Or. en

Justification

The introduction of an open scope requires a separate Annex to allow for applications exempted from the ban in Article 4(1) for EEE that were currently not in the scope of RoHS as not falling under any of the 10 first categories. Thin-film photovoltaic panels based on cadmium telluride should be granted an exemption, as the negative impacts caused by substitution (use of more energy-intensive, technologically inferior alternatives) outweigh the benefits of substitution (no use of cadmium).

Amendment 74

Proposal for a directive Annex VII - point 6

Text proposed by the Commission

Amendment

6. Where applicable, references to the relevant harmonised standards used or references to the specifications in relation to which conformity is declared:

6. Where applicable, references to the relevant harmonised standards used or references to the **technical** specifications in relation to which conformity is declared:

Or. en

Justification

This is an alignment in line with the introduction of a definition for a 'technical specification'.

Amendment 75

Proposal for a directive Annex VII - point 7

Text proposed by the Commission

Amendment

**7. Where applicable, the notified body ... deleted
(name, number) ... performed ...
(description of intervention) ... and issued
the certificate: ...**

Or. en

Justification

This is a correction of an error in the Commission proposal. There are no notified bodies for RoHS.

EXPLANATORY STATEMENT

"Some leading companies have voluntarily taken the process one step ahead to phase-out brominated and chlorinated organic substances, but that is not enough for solving the problems in the supply chain. We believe that only legislation can drive the whole supply chain to phase out hazardous substances and to produce HSF[hazardous substance free] products. To abide by the precautionary principle and to fulfill our corporate responsibility, Acer will proactively support RoHS 2.0 for the ban of all organo- Cl/Br Chemicals."

Acer Environment Progress - Halogen Free Products¹

1. Background

According to the Commission, every year, in the EU alone, an estimated 9,3 million tonnes of electrical and electronic equipment (EEE) are sold annually, the biggest share of which are large household appliances and IT and telecommunication equipment. As the market continues to grow and innovation cycles become even shorter, the replacement of equipment accelerates, **making waste electrical and electronic equipment (WEEE) the fastest growing waste stream**. WEEE arisings are estimated to grow to 12.3 million tonnes by 2020.

WEEE is a complex waste stream, including several hazardous substances. These substances, or their transformation products, can be released into the environment and damage human health, especially if not treated appropriately. Risks for human health and the environment are further increased by sub-standard recycling/recovery operations in developing countries.

According to Article 174(2) of the Treaty, **environmental damage should as a priority be rectified at source**. The waste hierarchy in the waste framework directive gives first priority to prevention, which is defined inter alia as setting out waste prevention measures that reduce the content of harmful substances in materials and products.

The current RoHS Directive, adopted in 2003, based on a proposal made in 2000, sought to phase-out a first series of hazardous substances in EEE, namely certain heavy metals and two groups of brominated flame retardants. It has led to a reduction of more than 100,000 tonnes of these substances being disposed of and potentially released into the environment.

RoHS has been an important instrument in setting not just a European standard, but a **global standard** for manufacturers. It has not prevented the continued development of new products but the opposite - products were redesigned to be compliant with RoHS. And many companies are already going beyond that to phase out the use of halogenated compounds.

¹ http://www.acer-group.com/public/Sustainability/sustainability_main04-3.htm

The Acer Group is a family of four brands -- Acer, Gateway, Packard Bell and eMachines. It ranks as the world's third-largest company for total PC shipments, and is No. 2 for notebooks. Revenues in 2008 reached US\$16.65 billion.

2. Key issues

The recast is an important opportunity to **take this progress a step further**. Your rapporteur will concentrate on explanations with regard to the new restrictions proposed, as these were specifically requested during the committee debate on 4 November 2009.

The **other key issues**, such as

- open scope (Article 2),
- the differentiation between RoHS and REACH (Recital 8 and Art. 4(7)),
- modifications of the criteria for exemptions (Article 5(1)),
- criteria for deciding on the duration of an exemption/grace periods (Article 5(2)),
- co-decision for future restrictions instead of comitology (Article 6)

should be sufficiently explained in the justifications of the relevant amendments.

Proposals for specific provisions on nanomaterials will be added in January 2010 following further evaluation of the situation.

2. New restrictions

The problem of hazardous substances in EEE, in particular with regard to waste treatment, has not been solved with RoHS 1.0. This was clear for the co-legislator already back in 2003. Article 6 of RoHS explicitly obliges the Commission to examine the feasibility of replacing other hazardous substances and materials used in EEE and to **present proposals to extend the scope of Article 4**, if appropriate.

a) Evidence about the negative impact of halogenated flame retardants and PVC

The Commission did study other hazardous substances and materials. It asked the Öko-Institut to look at substances not yet regulated under RoHS, to select candidate substances for potential inclusion into the RoHS Directive, to evaluate possible substitutes, and to propose policy options for each candidate substance¹. The Öko-Institut is reviewing exemptions from Article 4 of RoHS since 2005 for the Commission - it can thus be considered to be a reference authority on RoHS restrictions.

Halogenated flame retardants

The study states the following:

"the group of organobromine and organochlorine substances have been considered in the present study and their phase out from EEE is highly recommended by the authors".

The main reasons are the following:

- the potential to form **dioxins and furans** in case of uncontrolled fires (accidental fire) and upon co-combustion at lower temperatures or in not well functioning incinerators,

¹ http://ec.europa.eu/environment/waste/weee/pdf/hazardous_substances_report.pdf

- the formation of dioxins and furans and further hazardous combustion products can only be avoided by the application of advanced disposal technologies.

However, **advanced technologies do not even exist in all EU Member States, let alone in developing countries.** And where they exist, there is no requirement to actually use them for these waste streams.

Further reasons for a phase-out can be found in the explanatory memorandum of the Commission proposal on WEEE and RoHS from 13 June 2000¹:

Halogenated substances contained in WEEE, in particular brominated flame retardants, are also of concern during ... plastic recycling. Due to the risk of generating dioxins and furans, recyclers usually abstain from recycling flame retarded plastics from WEEE. In view of the lack of proper identification of plastic containing flame retardants and the inherent difficulty in distinguishing flame retardant plastic from ordinary plastic, most recyclers do not process any plastic from WEEE."

The use of halogenated flame retardants is a direct impediment to recycling of plastics in WEEE as a whole.

The problems above have not been solved by phasing out only two groups of brominated flame retardants (PBDE and PBB) to date.

PVC

The Commission study makes the following recommendation:

"The phase out of PVC should ... have priority over selective risk management measures to guarantee a reduced release of PVC, of its additives and of hazardous combustion products".

The problems of PVC waste in general have been well-documented by the European Commission already in 2000 based on five studies. The findings were referred to explicitly in the Explanatory Memorandum of the proposal from 2000:

Significant quantities of PVC are contained in WEEE². There is substantial evidence supporting the view that PVC is not suitable for incineration, particularly in view of the quantity and the hazardous nature of the flue gas residues resulting from incineration.³ In addition, losses of plasticizers, especially phthalates, from the landfilling of PVC are widely recognised and can have

¹ COM(2000) 347 final

² According to M. Rohr, Umwelt Wirtschaftsforum, No 1, 1992, more than 20% of the plastic used in electrical and electronic equipment is PVC.

³ Environmental aspects of PVC (Copenhagen 1996), Danish Environmental Protection Agency Position Paper of the Netherlands on PVC (The Hague 1997), Ministry of Housing, Spatial Planning and the Environment. The influence of PVC on quantity and hazardousness of flue gas residues from incineration, Study for DG ENV, Bertin Technologies, 2000.

potential adverse effects on the human health and the environment.¹ It should also be noted that very little PVC waste, in particular in WEEE, is currently recycled².

Unfortunately, the evidence on PVC came too late for inclusion in RoHS. But the problem is still there - it needs to be tackled now!

b) Action by manufacturers

The electronics manufacturing industry already understood in 2003 the problems of halogenated substances as a whole. Major companies took individual action to convert to low-halogen (free of halogenated flame retardants and PVC)³. There is now a global initiative to do so, and it is well advanced⁴. According to Greenpeace, the market share of such products is already at 50% for mobile phones (Nokia, Sony Ericsson and Apple), and expected to be at over 40% for new PCs in the next 1-2 years (Acer and HP). This initiative also includes the supply chain (e.g. manufacturers of plastic components), which in turn crosses over to manufacturers of EEE of other categories.

If the electronics industry with its highly complex products can convert to low-halogen within the next few years, then it should be no problem for inter alia the fast moving white goods sector to do the same. As an example, Electrolux is offering PVC-free fridges in Sweden⁵.

When such action is taken at the design stage, according to industry, it does not create extra costs. Instead, it will save society significant costs in terms of damage to health and the environment. But to be truly successful, economic operators need certainty which is best provided by a clear legislative framework.

c) Evidence about substitutes

Halogenated flame retardants

The Commission argues that the available data does not allow deciding on further restrictions of halogenated flame retardants. At the same time, they state that "*some*" information is available on the substitutes and that "*it is settled that they do not present some of the hazards (such as persistence, bioaccumulation or toxicity for the halogen-free flame retardants)*"⁶

There was a similar controversy over DecaBDE for many years. Having disregarded the availability of safer substitutes, the Commission had to concede in a study in 2007 that "*substitutes do exist on the market ... and that literature data suggest that potential adverse*

¹ The Behaviour of PVC in Landfill, Study for DG ENV, Argus in association with University Rotstock, 1999.

² Prognos, Study for DG XI, Mechanical recycling of PVC wastes, January 2000.

³ <http://www.greenpeace.org/international/campaigns/toxics/electronics/how-the-companies-line-up>

⁴ http://thor.inemi.org/webdownload/newsroom/Presentations/NEPCON_China_2009/HFR-Free_Conversion.pdf

⁵ <http://www.electrolux.se/node38.aspx?productID=18360>

⁶ Commission Impact Assessment of the RoHS recast, SEC(2008)2930

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2930:EN:NOT>

*environmental and human health effects of at least some substitutes may be minimal."*¹

Consequently, for DecaBDE, the Commission considers that "*the remaining uncertainties about its toxicity and degradation to other banned products, as well as the commercial availability of substitutes justify maintaining the ban on this substance*"².

It is difficult to understand why the same analysis should lead to a ban in one case (DecaBDE), but not in another similar case (other halogenated flame retardants).

PVC

The Commission does not question the availability of safer substitutes for PVC in its impact assessment, but only raises cost issues. If the external costs of PVC were internalised, its use would be prohibitively expensive. The fact that PVC is cheap cannot be an argument against its replacement, when it creates significant external costs due to the manifold well-documented problems of PVC waste treatment.

3. Conclusions

Prevention is better than cure. It is better to address environmental problems at the source - as indeed required as a priority by the Treaty and as implemented in the waste framework directive.

Therefore, your rapporteur suggests, based on

- a) Commission studies on RoHS, PVC and halogenated flame retardants,
 - b) actions by economic operators and
 - c) information on substitutes
- phasing out brominated and chlorinated flame retardants as well as PVC and its hazardous additives.

¹ http://ecb.jrc.ec.europa.eu/documents/Existing-Chemicals/Review_on_production_process_of_decaBDE.pdf
² Commission Impact Assessment of the RoHS recast, SEC(2008)2930