

**Unofficial note of the Technical Adaptation Committee on the WEEE and RoHS Directives
Brussels, 6 July 2005**

Summary

The UK presented the results of a workshop that it had hosted in London in May. This Member State & industry workshop had discussed possible compliance approaches for the RoHS Directive.

On WEEE, the TAC discussed the progress made by the treatment standards working group; Member States' plans for national registration; and the status of the CENELEC marking standard.

There was also further discussion about grey area products that were common to both the WEEE and RoHS Directives.

Under AOB, there were updates from the Commission on the status of the RoHS exemptions process; the establishment of Maximum Concentration Values; and the review of categories 8 and 9.

Main Points

Report on the Member State and industry RoHS workshop, hosted by DTI on 19 May

The UK gave a presentation summarising the outcome of a joint Member State and industry workshop held in London on 19 May. A workshop report had been distributed to all Member States prior to the meeting, copy attached.

The aim of this workshop had been to discuss the ways in which a market surveillance system for the RoHS Directive might be established across the EU. This had involved discussion of the lessons to be learned from existing compliance approaches and the ways in which these might inform a pragmatic and effective 'self-declaration' compliance regime. The TAC agreed both with the approach set out by the workshop and that the next step should be to draft practical guidance that might be reviewed by Member States, with a view to reaching agreement on this in the autumn. The UK agreed to take this task forward and asked other Member States if they wished to be involved.

It was noted that industry had emphasised the need for agreed testing methods that might be adopted consistently by Member State enforcement bodies. The Commission had asked industry to suggest suitable RoHS test methods, but had not received any significant response.

Grey Area Products

The Commission had circulated another table of 'grey area products', giving its interpretation on whether or not they might be considered to fall within the scope of the WEEE and RoHS Directives. The TAC members discussed this document and offered their views where these differed to the Commission interpretation. Some Member States had details of other products that they wished to be considered by the TAC in this way.

WEEE Annex II - Report of the working group lead by the Netherlands Ministry of Housing, Spatial Planning and the Environment (MinVRM) on 27 May

The Netherlands gave a presentation summarising the progress made in Member State discussions about WEEE treatment standards. There was a discussion between TAC members on some of the issues raised by the presentation. Two further workshops were planned – in July and August. The intention was to report back to the TAC on further progress some time in October.

National Producer Register

The Commission asked each TAC member to give a short summary of the WEEE registration systems being implemented in their countries.

WEEE Data Formats

The Commission had circulated a guidance document on this subject, which was discussed by Member States. Some Member States had problems with some of the drafting, but seemed satisfied when the Commission confirmed that this document only had advisory status and was non-binding.

Status of the CENELEC WEEE Marking Standard

The Commission explained that it had received the proposed standard from CENELEC in December of last year. However, the Commission had concluded that the standard did not comply exactly with the requirements of the Directive in two specific instances and had sent comments back to CENELEC to this effect. It was hoped that these problems could be resolved at a meeting that was due to take place on 11/12 July.

Commission Documents

The Commission had published a 'Frequently Asked Questions' (FAQs) document on the Europa website in May. The Commission said that it intended to update this on a regular basis.

The Commission had also, on 11 May, published a document relating to WEEE data formats and compliance monitoring.

AOB

Toys

One Member State said that guidance was needed to help toy producers decide which products were covered by WEEE and RoHS. It suggested that a decision tree specific to the toy industry might form a useful addition to the Commission FAQs document. Although the Commission was sympathetic to these concerns, it maintained that it would not be feasible to make special provision for any one particular sector in this way.

RoHS Exemptions

The Commission gave an update on the exemptions process.

The first package of exemptions had consisted of those voted on by the TAC in December last year, on the basis of the study carried out by ERA Technology. For procedural reasons, this vote had needed to be taken again in March and the proposal (together with the results of the TAC vote) had been resubmitted to the European Parliament and

Council. The Commission had now fulfilled its obligations to the Parliament by responding to its comments; it was now expected that the first package of exemptions would be formally adopted shortly.

The second package had consisted of just two proposed exemptions – for ‘Deca-BDE in polymeric applications’ and for ‘lead in lead-bronze bearing shells and bushes’. The Commission draft Decision exempting these applications had not gained a qualified majority in the TAC vote on 19 April and the proposal had therefore been transmitted to the Council on 6 June. The Council had up to three months from that date in which to adopt the Decision, reject it or do nothing, (in the latter case the Decision would be adopted by default). Member States were informed that the matter would be discussed by COREPER (a committee consisting of the Member States' Permanent Representatives to the EU) on the 8 July.

The third package of exemptions would consist of the 19 taken forward from the 22 suggestions contained in the Commission stakeholder consultation that closed on 11 February, together with some additional requests that had been received since then. As the response to the consultation had been disappointing, it had been decided to appoint an independent technical expert to review all of these exemption requests. The Commission stated that there was now no plan to launch a further technical study; instead it had been decided that an expert would be appointed, on an ongoing technical assistance contract, to review both the current exemption requests and any further requests that were received from then on.

Maximum Concentration Values (MCVs)

The Commission announced that the three-month period for Council consideration of the proposed MCVs Decision had expired that day; as a result the MCVs should be adopted and formally notified to Member States by the end of July. The Commission Decision would then be published in the Official Journal, amending the original Directive.

Study to review the RoHS status of WEEE Categories 8 and 9

On 17 March this year, the Commission had issued an invitation to tender for technical consultants to take on the study of categories 8 & 9 and to put forward recommendations on whether these should be included within the scope of RoHS. The bidder selection process was now underway and it was hoped that the contract could be awarded to the successful contractor before the summer break.

Cables

The recently published Commission ‘Frequently Asked Questions’ (FAQs) document had suggested that all cables fell within the scope of both WEEE and RoHS. This was contrary to the UK’s understanding of this issue and the UK had written to the Commission requesting clarification. The Commission said that it would look into the issue and report back.

Grace Periods

The UK asked whether the Commission had reached any view on the issue of ‘grace periods’ for those companies wishing to make use of an exemption that had been requested but not agreed. At the moment, industry argued that if a company adopted a RoHS compliance approach that was dependent on a particular exemption being agreed and this was subsequently rejected, this would leave insufficient time for production

processes to be changed in time for 1 July 2006. The Commission said that the possibility of 'grace periods' was an idea that had originated with industry and that it had yet to reach a final view on the matter.

Next Meeting

As yet, there was no date fixed for the next TAC, although the intention was to hold another meeting in the fourth quarter of the year.

DTI

15 July 2005

Summary Report:

Workshop on the implementation of the RoHS Directive

DTI Conference Centre, Victoria, London
19 May 2005

Aims and Objectives of the Workshop

- Aim: To discuss ways in which a market surveillance system for the RoHS Directive might be established across the EU.
- Objective: To develop practical guidance that will assist Member States with enforcement of the RoHS Directive ... and help industry comply.

Attendees

Amongst the key attendees were:

- 1) Representatives of member state governments, inspectorates and agencies responsible for monitoring and enforcement of RoHS compliance (inc. Belgium, Denmark, Finland, Hungary, Ireland, The Netherlands, Norway, Poland, Portugal, Slovenia, Sweden and UK) and the European Commission;
- 2) Representatives of various trade associations (inc. BEAMA, EICTA, ORGALIME, CECED, ZVEI, JBCE, SEMI, ESIA, TIE¹ and AeA Europe);
- 3) Representatives of major EEE producers.
- 4) Representatives of the Israeli and American governments.

General Format of the Workshop

After opening remarks from DTI and EICTA, two presentations were given outlining existing European enforcement networks and information exchanges used for related legislation:

- 1) Introduction of CLEEN² Network & Past Experiences with Implementation of Environmental Legislation, Björne Olsson, National Chemicals Inspectorate, Sweden
- 2) Introduction of ICSMS & Cooperation between the Market Surveillance Bodies in Europe & Data exchange - process and practice, Thomas Schrein, ICSMS³

After these presentations, the workshop split into two parallel-session groups to further discuss:

- a) Learning from Existing Compliance Approaches; and

¹ Toy Industries Europe

² Chemical Legislation European Enforcement Network

³ ICSMS = The internet-supported Information and Communication System for the pan-European Market Surveillance of technical products

b) Enforcement and Demonstration of Compliance with RoHS

The workshop concluded with a review of the conclusions reached during these parallel group sessions.

All presentations are summarised in Annex A.

Agreed Outcomes and Conclusions

Group 1: Learning from Existing Compliance Approaches

The two key questions for the Group 1 Discussion were: (a) what are the key lessons to be learnt from existing compliance approaches e.g. for ELVs, Cadmium Directive and (b) What concrete actions could be taken to facilitate RoHS compliance and enforcement across the MS? The following conclusions were reached:

(a) What are the key lessons to be learnt from existing compliance approaches?

- Documentation AND analysis (testing) have a role to play in enforcement;**
- Need common understanding of what is a compliant product:
 - To ensure same decisions are taken by Member States;
 - To ensure same interpretation between Industry and Enforcement Authorities.
- Start simple e.g. 1 substance, 1 product / component.

(b) What concrete actions could be taken to facilitate RoHS compliance and enforcement across the Member States?

- Initiate a network for Member State enforcement authorities:**
 - Information sharing & problem solving;
 - Establish a database to share inspection information (good & bad).
- Issue a statement to highlight the role/importance of documentation within enforcement;
- Develop dialogue between industry and enforcers with potential to develop guidelines on documentation requirements
- Agree common analytical techniques
 - Further debate needed on common sampling techniques;
- Publication of MCVs and legal definition of homogenous materials is required.

Due to time constraints, it was not possible to allocate responsibilities or timelines for the agreed actions within the workshop.

Group 2: Enforcement and Demonstration of Compliance with RoHS

During discussions Group 2 concentrated on what it saw as the two principal issues surrounding any RoHS compliance system: (a) What is regarded as a practical compliance process that could be implemented, and (b) How do we deliver an effective approach to the sampling & testing of finished products? With respect to each of these, the following conclusions were agreed:

(a) What is regarded as a practical compliance process that could be implemented?

- Generally agreed that the step wise approach to RoHS compliance is essential, whereby there is an important role for voluntary self declarations (based on quality assurance systems and/or technical documentation) in demonstrating compliance**
- Enforcement Agencies & Industry both need a simple system, with a systematic approach
- Testing should always be regarded as the last resort, and Industry should generally be trusted to deliver compliant products
- There is widespread support for voluntary industry standards to be developed associated with Material Declarations

(b) How do we deliver an effective approach to sampling & testing of finished products?

- **Generally agreed that the approach to testing must be *Risk-based***
- e.g. Where testing is required this should be targeted to items of risk (e.g. PVC – Cd/Pb);
- On the matter of homogenous materials and mechanical disjoining it was generally agreed that if a small component/item could not be mechanically disjoined, this should be treated as a homogeneous material for testing purposes.

Plenary discussion

During the plenary discussion there was no disagreement about the overall results of both groups. In particular the following observations were made:

- The day provided an excellent opportunity for exchanging information and views on how to establish a pragmatic RoHS market surveillance approach, resulting in a positive and constructive debate.
- There was broad agreement on a number of basic principles (as already highlighted).
- Follow-up action is needed to ensure that the above principles are included within guidance for enforcement bodies that would also be made available to industry and other stakeholders.
- Whilst there is some expectation that the TAC will provide answers, it was also felt that an on-going dialogue between enforcers, policy makers and industry (in particular SMEs) would be useful.

Annex A: Summary of Presentations

Summary of Opening Presentations

1) Introduction of CLEEN Network & Past Experiences with Implementation of Environmental Legislation, Björne Olsson, National Chemicals Inspectorate, Sweden

The Chemicals Legislation European Enforcement Network (CLEEN) co-ordinates and improves the enforcement of EU chemicals legislation via acting as an information exchange for chemical inspectorates from the MS.

Key messages:

- Information exchange between MS inspectorates is vital to improve enforcement in view of the rules of the single market and EU-wide economy;
- A range of projects is possible including the development of common enforcement tools;
- Limitations are imposed by its voluntary status as within CLEEN all decisions and inputs from MS are completely voluntary.

2) Introduction of ICSMS & Cooperation between the Market Surveillance Bodies in Europe & Data exchange - process and practice, Thomas Schrein, ICSMS

The Information and Communication System for Market Surveillance (ICSMS) covers a range of safety-related Directives (eg low voltage, general product safety, EMC). A central information database provides details of all non-conforming products in circulation within the EU, including details of product testing, and can be accessed directly by any market surveillance authority. By the end of 2005, 11 EU member states will have joined the system.

Key messages:

- Local market inspection bodies lack the means to interact and exchange enforcement information;
- The ICSMS database enables rapid on-time information exchange, efficient co-operation with customs authorities and a robust means of informing the public about unsafe products.

Summary of Group 1 Presentations

1) Existing enforcement practises on product related environmental legislation in The Netherlands, Kees van Hees, Dutch Chemicals Inspection.

Kees van Hees described current practices in the Netherlands for the enforcement of legislation on Cadmium and substances in Packaging and ELVs. This included the structure of the inspectorates, testing methods and process for dealing with violations. Concluded that although there are issues with testing methods (eg Cr(VI) and XRF), methods of sampling and analysis have been sufficient for the Dutch criminal courts to date for packaging & Cd.

Key messages:

- RoHS enforcement will not be easy - so start simple e.g. 1 substance or 1 part;
- Start a network of inspectors from different member states & make use of the know-how of the trade and industry business;
- Need to ensure that MS enforcement authorities reach same decision on compliance of product x;
- Inspections of declarations of conformity can be a practical solution for RoHS enforcement, but sampling and analysis cannot be excluded.

2) **Checking Compliance - Lessons Learnt from Existing Legislation Affecting Product Design, Jan-Willem Scheijgrond, EICTA**

EICTA examined recent experiences with the New Approach, Cadmium and ELV Directives and subsequent lessons for RoHS enforcement.

Key messages:

Co-ordination of RoHS enforcement on an EU level is essential in order to:

- Agree on how to check compliance on the basis of documentation;
- In the absence of EU-agreed standards, agree on common sampling and analytical methods.

3) **Ideas on enforcement regarding the RoHS directive, Björne Olsson, Sweden, National Chemicals Inspectorate, head of unit.**

KEMI, the Swedish National Chemicals Inspectorate, described their experiences in undertaking inspections of consumer products including the process followed (inspection on location, by mail) and actions taken (injunctions, fines). Analysis could be high cost and there were queries over the definition of 'homogenous material'.

Key messages:

- Establish a joint RoHS inspection project to ensure common interpretation and share experience;
- Visit companies to build up knowledge about EEE.

Summary of Group 2 Presentations

1) **EICTA's view on the RoHS compliance process, Ralph Jäger, EICTA**

Ralph Jäger presented EICTA's suggestion of an approach to compliance for both enforcement bodies and industry based on (1) Initial presumption of compliance through the placing of items on the market; (2) Voluntary self-declaration by producers (based on quality assurance processes and/or technical documentation) ONLY where expressly requested to do so by Authorities; (3) Assessment of Self-Declaration and where necessary other supporting documentation by Market Surveillance Authorities; and (4) as a last resort, verification by testing authorities in cases of severe concern.

Key messages:

- As with other existing product related environmental legislation, approach should be based on Presumption of Conformity; and
- Then Self Declaration of Compliance and supporting technical documentation upon request;
- Testing is the last resort.

2) **International Standards on RoHS Testing, Markus Stutz/Ian Park, IEC TC111 WG3 project leader RoHS testing**

On behalf of Markus Stutz, Ian Park presented a review of the activity of IEC on the development of a standard for RoHS testing, highlighting the importance of a harmonised standard, the scope of the IEC standard, those activities not covered (esp. sampling), and the intended development of a Guidance Document on sampling methods.

Key Messages:

- Although RoHS is an EU directive, we need a global IEC standard for testing;
- Standard only covers testing, not the process of sample selection and preparation. Guidance on this is needed.

3) Sample preparation, Kaisa-Reeta Koskinen, Nokia, member of working group IEC TC111 WG3

Kaisa-Reeta Koskinen presented on the obstacles associated with practical sample preparation and testing, the need for sector specific guidance and the need for a Risk-based approach to RoHS testing.

Key Messages:

- For sampling and testing, keep it simple;
- Be aware of the risks associated with Sample Preparation;
- For these and other reasons, we need Practical Guidance to be developed.

4) Sample preparation on the basis of MCV decision – what will it entail? Paul Goodman, ERA

Paul Goodman also presented on sample preparation, taking into account the practicalities on the basis of MCV. The difficulties in sampling to a material level as product complexity increases along the EEE supply chain was highlighted, with the message that sampling should be Risk-based. Further, ERA overviewed different analysis methods and their differences in accuracy and application.

Key Messages:

- Whatever approach is used for sample preparation by Member States and Enforcement bodies, it must be simple.