

# Unofficial note of the Technical Adaptation Committee on the WEEE & RoHS Directives

Brussels, 20<sup>th</sup> June 2007

## A. Summary

Information updates on the reviews for both the RoHS and WEEE Directives; general discussion on the RoHS exemption process; presentation on the fifth meeting of the RoHS Informal Network of Enforcement Authorities; general discussion on Member State reporting obligations under the WEEE Directive; and AoB.

## B. Detail

### RoHS Directive (2002/95/EC)

#### 1. Information Update

##### 1.1 The Review of the RoHS Directive

The Commission had received around 50 responses to the invitation for comments by the 22 May deadline. These had predominantly been sent from industry but others had been received from NGOs, Member States and representatives from governments outside the EU. All contributions were now being analysed, the next stage would be to identify how these might be linked to the overall review study.

On specific issues, the Commission said that: -

- it intends to launch a study to consider the inclusion and restriction of additional substances under RoHS, how substances of concern are currently being managed and how any proposed restrictions might interact with any proposals brought forward under REACH.
- it also intends to maintain the scope of the Review to the topics that were identified in their initial consultation document – very few critical comments concerning the topics identified for inclusion were received and there were no calls for any additional subject areas to be considered.

The Commission stressed that the Review is still very much at the preliminary stages of development and that no final decisions had been taken about the shape or content of any formal proposals.

Following questions raised by Member States, the Commission made the following points: -

- feedback received from industry had suggested that there should not be any additional substance restrictions under RoHS as they were already being managed and would soon fall under the controls to be introduced by REACH. A number of NGOs, however, had put forward suggestions for a number of additional substances that they felt should be addressed by RoHS. The argument put forward by the NGOs to support this position was that REACH would only look at certain category of substance by volume and properties i.e. only the most dangerous.
- DG Enterprise had commissioned ECOLAS to coordinate a questionnaire on the impact of the RoHS Directive that had recently been circulated to Member States and stakeholders. A stakeholder workshop would be hosted in Brussels on 3 July to consider the preliminary results and analysis.
- the Commission expect to submit proposals for any issues arising out of the RoHS Review in the second half of 2008. It would need to launch a stakeholder consultation on the scope of the review followed by a second stakeholder consultation on options before submitting proposals to Council and the European Parliament for final negotiation.

## 1.2 Exemptions: Status of Exemption Requests and General Discussion

The Okö Institut had now considered the last batch of exemption requests. Member States would be asked to vote and comment on a new draft Commission Decision covering a further package of exemptions under the 'written procedures' at the beginning of September. This action was being delayed until then to take account of the introduction of the new comitology procedures, which were expected to be formally adopted by the end of July.

The Commission's contract with the Okö Institut was scheduled to continue to the end of October this year, when a report would be published. The Institut had been asked to consider twenty-six requests for additional exemptions under the current contract of which eight had been withdrawn, ten were likely to be rejected, five were being reviewed and likely to be rejected and only three had been identified as possible candidates for approval and exemption from the requirements of RoHS, subject to Commission and Member State approval.

A new stakeholder consultation had been launched for the latest batch of exemption requests to have been received by the Commission. There were seven new requests on the list, of which some were resubmissions or revisions of earlier 'unsuccessful' ones.

Some Member States and industry groups had raised concerns about the transparency and long timeframe for the consideration of additional exemption requests. Member States were reminded that the Directive

only obliges the Commission to carry out a public consultation, followed by consideration of draft Commission Decisions in the TAC. In 2004, however, the Commission had issued a call for technical expertise to assist the TAC with specialist knowledge to approve or reject exemption requests and this additional stage in the process had been continued to date.

The Commission had received some initial suggestions for improving the process as a part of the review consultation, but some of these (it said) did not satisfy the new comitology requirements.

- The UK initiated a discussion on the exemption process by acknowledging the pressures that the Commission had faced considering the very large volume of exemptions it had received over the past four years. It did, however, hold concerns that fell into three areas. These were: -
  - the length of time it takes to process exemption requests: some were still unresolved after nearly two years;
  - continuity: the rejection of an exemption request through receipt of insufficient information. A revised checklist or template would help to ensure that a sufficient level of information was provided by the applicant at the start of the process; and
  - the role of Member States: Member States did not have the opportunity to raise questions on those requests that the technical consultants had recommended be rejected.

The UK offered to help take discussions forward on an informal basis with any other Member States that might want to be involved. It suggested that it could hold a workshop in advance of the next TAC meeting and could broaden the agenda to take any other issues that colleagues might want to feed into the formal review process.

- In response to the points made by the UK, one Member State said that it believed that the process was not the issue, but the criteria for the consideration of additional exemption requests. It suggested that the fundamental basis of such consideration should reflect the fact that the main reason that such restrictions had been put in place primarily was environmental protection and those restrictions had now been in force for over a year. This should negate the need for many of the outstanding requests, which it felt were now often resubmissions with companies pushing the same exemption repeatedly whilst continuing to expect to be able to place non-compliant products on the market. There was, it suggested, an urgent need to set clear criteria and ensure the removal of these non-compliant products. This Member State supported the UK's suggestion for an informal workshop.

- A couple of other Member States spoke in support of the general discussions. One reminding the TAC of the importance of the Single Market legal base to the RoHS Directive, which was in place to secure the free movement of goods within the EU.

Bringing the discussion to a close, the Commission believed that the checklist that had first been used some time ago might usefully be looked at again and revised. It supported the UK's proposal for the holding of an informal workshop and asked the UK delegation to report back on discussions at the next TAC meeting. It also agreed with the Member State that had stated that the objective of the RoHS Directive was to phase out the use of the restricted substances, with exemptions to its requirements being the exception rather than the rule.

## 2. Enforcement

### 2.1 RoHS Enforcement Authorities Informal Network

The French delegation presented an overview of the 5<sup>th</sup> Meeting of the 'Informal Network of Enforcement Authorities' that had been held in Paris on 22 February.

There had been final discussions on the Manual of Decision (scope document) that had subsequently been published as a first version in March. Various specific scope issues had been discussed, as well as a general discussion on the differences between EU RoHS and China RoHS. Finally, there had been a presentation of an alternative method (to Gas Chromatography and Mass Spectroscopy) of testing for the presence of the RoHS-6 substances in end-equipment placed on the market.

It was announced that the next meeting of the informal network would take place in Tallinn at the end of September, where a draft constitution would be discussed. The UK's enforcement authority had agreed to take over the Chairmanship and Secretariat of the Network for the next four meetings and would aim to establish a network website as a priority action.

### 2.2 Enforcement Activities

Member States were invited to provide the TAC with an overview of significant enforcement activities within their national borders since the meeting held in November last year.

Six Member States (including the UK) offered contributions to the debate, including one that had recently commissioned a study looking at sampling, the dismantling of equipment and the undertaking of analytical testing in laboratories.

## **WEEE Directive (2002/96/EC)**

### **3. Reporting Obligations**

#### **3.1 Article 12 (1) - Reporting on Targets**

The Commission noted that the first report on collection and treatment targets from Member States was due in July 2008. Due to the difficulty in calculating the composition of mixed loads and treatment rates, operators are allowed to make estimates in their reporting. Differences in estimation procedures, however, could make reports from different Member States difficult to compare. The Commission asked whether this was seen as a problem, whether there was a need for guidance, and whether the draft guidance that had been circulated would solve the problem.

The UK agreed that reporting on targets is complex, but argued that the Commission's proposed guidance was too detailed. The UK pointed to the protocols research undertaken by Defra to determine the composition of loads of mixed WEEE, and suggested that this sort of work should form an acceptable basis for making estimates.

Other Member States noted that their collection infrastructure is based around five categories of WEEE, while the Directive requires reporting on the basis of ten categories. Several made the suggestion that the ten-category requirement should be reconsidered when the Directive is revised.

There was general agreement that there was no need for detailed guidance from the Commission on procedures for making estimates. Member States are developing their own procedures and it was viewed as too late to try to harmonize reporting at this stage, given that data is already being produced.

The Commission agreed that the draft guidance circulated was unsuitable to be adopted as it stands. It suggested that while it is fine for Member States to make their own calculations for estimating collection and treatment figures, it is essential that this estimation process is clear and transparent. Member States were invited to circulate any guidance they already have on estimation procedures.

#### **3.2 Article 12(2) – Reporting on Implementation**

The Commission noted that reports on implementation should be submitted from Member States by 13 September 2007. Member States were requested to give full answers to the questions and explain in practice how the various elements of the Directive are or are not working.

## 4. Information Update

### 4.1 Update on the WEEE Review Process

The Commission reported that the Institute of Environment and Human Security of the United Nations University (UNU-EHS) had been appointed to undertake a study in September last year. The objective of the study would be to complete the information needed to inform the review of the Directive and to provide an overview of the impact of the Directive from an environmental, economic and a social perspective, by analysing the management (collection, treatment) of different categories of WEEE. A stakeholder workshop had been held in Brussels on 15 March.

### 4.2 The Harmonisation of WEEE Registers

The Irish representative of the European WEEE Register Network (EWRN) presented the conclusions of its meetings in November 2006 and March 2007. The existing members of the Network believe that a single EU register was not possible, but that the registration bodies must be strongly involved in any harmonisation of procedures. The priorities for the Network were identified as harmonising definitions of scope, B2B/B2C and weight of products, as well how to deal with the issues of distance sellers and free riders.

Those Member states that were not yet involved in the EWRN were encouraged to join the Network for future meetings. The next meeting would take place in Lisbon in October.

## **Any Other Business**

### 5. The following points were discussed:

#### 5.1 Comitology

The TAC was provided with an update on the new Comitology procedures that will have an impact on WEEE and RoHS as well as around twenty other previously adopted Directives. These procedures would also apply to any new Directives adopted from September 2006 onwards.

#### 5.2 WEEE: Marking Requirements

One Member State asked how others were (on a practical level) implementing the producer marking requirement, particularly in relation to imported products.

The Commission confirmed that guidance had been issued stating that importers should not be required to unpack and relabel products. The Commission invited member states to respond to the enquiry to explain how they were dealing with this issue and meeting the producer marking requirement.

### 5.3 WEEE: Weatherproofing Requirements of WEEE

Another Member State asked whether weatherproof covering should be required for WEEE being stored at collection facilities, in order to maximise re-use potential and meet the requirement in Articles 3 and 5.4 and Annex III of the Directive.

The UK made the point that re-use can be maximised without requiring weatherproof covering from the first collection point. This is because in the UK, equipment that is suitable for refurbishment and re-use is generally separated out before storage at collection facilities. The UK has a wide network of reuse organisations and the WEEE Regulations give priority to the reuse of whole appliances.

The Commission agreed to consider the issue further and come back with clarification.

### 5.4 RoHS: Heating and cooling systems

One Member State asked whether equipment like gas-fired boilers and professional refrigeration equipment should be included under the scope of RoHS and/or WEEE.

Another Member State reminded that colleague and the TAC of the specific criteria that had been agreed during discussions since the Directives were adopted. In its opinion, gas fired powered boilers would be out of scope as their primary power source was not electricity. According to the Commission's FAQ document, the RoHS Directive does not distinguish between professional and non-professional equipment and WEEE only does so for financing purposes.

### 5.5 RoHS: Annex of Exemptions - Clarification

One Member State asked about the wording of one of the exemptions in the Annex to the RoHS Directive. The Commission asked that Member State to submit its request for clarification in writing and it would then distribute the outcome to all others.

## **Date of Next Meeting**

6. It was announced that the provisional date for the next meeting was 12 November 2007.