Electrical and electronic equipment: restriction of the use of certain hazardous substances. Recast

2008/0240(COD) - 24/11/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 640 votes to 3, with 12 abstentions, a 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 (RoHS) in electrical and electronic equipment (recast).

Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission's proposal as follows:

Purpose and scope: according to the compromise text, the Directive should contribute to **protection of human health and the environment**, as well as the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Member States shall provide that electrical and electronic equipment that was outside the scope of Directive 2002/95/EC, but which would be in non-compliance with this Directive, may nevertheless continue to be made available on the market until eight years after the entry into force of the Directive.

In addition, the Directive does not apply to:

- equipment which is necessary for the protection of the essential interests of the security of Member States, including arms, munitions and war material intended for specifically military purposes;
- equipment designed to be sent into space;
- equipment which is specifically designed and to be installed as part of another type of equipment that is excluded or does not fall within the scope of this Directive, which can fulfil its function only if it is part of that equipment, and which can be replaced only by the same specifically designed equipment;
- large-scale stationary industrial tools;
- large-scale fixed installations;
- means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved;
- non-road mobile machinery made available exclusively for professional use;
- active implantable medical devices;
- photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location to produce energy from solar light for public, commercial, industrial and residential applications;
- equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

Definitions: a number of definitions should be included in this Directive in order to specify its scope. In addition, the definition of 'electrical and electronic equipment' should be complemented by a definition of 'dependent', to cover the multipurpose character of certain products, where the intended functions of electrical and electronic equipment are to be determined on the basis of objective characteristics, such as the design of the product and its marketing.

Prevention: Member States shall ensure that EEE placed on the market, including cables and spare parts for its repair, its reuse, updating of its functionalities or upgrading of its capacity, does not contain the substances listed in Annex II.

This provision shall not apply to the re-use of spare parts recovered from EEE put on the market before 1 July 2006 in equipment placed on the market before 1 July 2016, under the condition that re-use takes place in auditable closed-loop business-to-business return systems, and that re-use of parts is notified to the consumer.

Adaptation to the REACH Regulation: for the purposes of adapting Annexes III and IV to scientific and technical progress, the Commission shall adopt measures such as the inclusion of materials and components of EEE for specific applications in Annexes III and IV on exemptions if such inclusion does not weaken the environmental and health protection of Regulation (EC) No 1907/2006 (REACH) and where any of the following conditions is fulfilled. In particular, the risks to human health and the environment arising from the use of Hexabromocyclododecane (HBCDD), Bis (2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP) and Dibutylphthalate (DBP) should be considered as a priority.

The decision on the inclusion of materials and components of EEE in Annexes III and IV on exemptions and the length of possible exemptions shall take into account the availability of substitutes and the socio-economic impact of substitution. Decisions on the length of possible exemptions shall take into account any potential adverse impacts on innovation.

Measures adopted for categories 1 to 7, 10 and 11 of Annex I, have a validity period of up to five years and, for categories 8 and 9 of Annex I, a validity period of up to seven years, to be decided on a case-by-case basis and which can be renewed.

An application for renewal shall be made no later than 18 months before an exemption expires. The Commission shall decide on an application for renewal no later than 6 months before the expiry date of the existing exemption unless specific circumstances justify other deadlines. The existing exemption shall in any case remain valid until a decision on the renewal application is taken by the Commission.

In the event that the application for renewal is rejected or that an exemption is deleted, there shall be a minimum period of 12 months and maximum period of 18 months from the date the decision is taken before the exemption expires.

In order to ensure uniform conditions of implementation, the Commission, in accordance with the procedure referred to in Article 19(2), shall adopt a harmonised format for applications pursuant to paragraph 3 as well as comprehensive guidance for such applications, taking into account the situation of SMEs.

Review and amendment of the list of restricted substances in Annex II: as soon as scientific evidence is available, and taking into account the precautionary principle, the restriction of other hazardous substances, including any substances of very small size or internal or surface structure (nanomaterials) which may be hazardous due to properties relating to their size or structure, and their substitution by more environmentally friendly alternatives which ensure at least the same level of protection of consumers should be examined

To this end, the review and amendment of the list of restricted substances in Annex II should be coherent, should maximise synergies with, and should reflect the complementary nature of the work carried out under other Union legislation, and in particular under Regulation (EC) No 1907/2006 while ensuring the mutually independent functioning of this Directive and that Regulation . Consultation with the relevant stakeholders should be carried out and specific account should be taken of the potential impact on SMEs.

Obligations of distributors: Member States shall ensure that when making an EEE available on the market, distributors act with due care in relation to the requirements applicable in particular by verifying 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 this Directive.

Presumption of conformity: in the absence of evidence to the contrary, Member States shall presume electrical and electronic equipment bearing the CE marking as conforming to this Directive.

Materials, components and EEE on which tests and measurements demonstrating compliance with the requirements of this Directive have been performed, or which have been assessed, in accordance with harmonised standards, the references of which have been published in the Official Journal of the European Union, shall be presumed to comply with the requirements of this Directive.

Comitology: there is a need for uniform conditions for implementing this Directive, particularly with regard to the guidelines and format of applications for exemptions.

According to Article 291 of the Treaty on the Functioning of the European Union (TFEU), rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468 /EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

Delegated acts: the Commission should be empowered to adopt delegated acts in respect of amendments to Annex II, detailed rules for complying with maximum concentration values, and the adaptation to technical and scientific progress of Annexes III and IV.

Review: no later than three years following the entry into force of the Directive, the Commission shall examine the need to amend the scope of this Directive in respect of the EEE concerned, and shall present a report thereon to the European Parliament and the Council accompanied by a legislative proposal, if appropriate, with respect to any additional exclusions related to that EEE.

No later than ten years following the entry into force of the Directive, the Commission shall carry out a general review of this Directive, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal.