

**Re-cast of the RoHS Directive
Commission proposal COM(2008)809final:
Request for consistency with REACH**

15 July 2009

Summary

The Commission's intention to re-cast Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) has been outlined in proposal COM(2008)809final. Cefic welcomes certain elements of the proposal but takes this opportunity to underline the necessity of an alignment with REACH. Indeed, Cefic would like to express concerns about aspects of this proposal relating to the evaluation and restriction of substances under RoHS, a topic also dealt with in REACH.

Cefic regrets that a full merger between RoHS and REACH has not been considered immediately possible. However, Cefic believes major inconsistencies need to be addressed immediately while the need for further clarification can be assessed and foreseen in the perspective of the upcoming REACH review.

1. Duplication of restriction procedures and criteria must be avoided.

Cefic believes it is crucial that the Commission's proposal foresees full alignment with the restriction rules laid down by the REACH Regulation.

2. Assessment of substances must be dealt with using appropriate expertise.

As the REACH legislation has put in place instruments for the assessment of chemical substances, involving the participation of chemicals specialists, Cefic opposes the proposal to establish a parallel, duplicating system within RoHS, where the development of a substance assessment methodology as well as the assessment of chemical substances is undertaken by a Committee composed of waste experts.

3. Unnecessary administrative burdens must be avoided.

Cefic is concerned that Annex III will lead to unnecessary administrative burdens vis-à-vis preparatory work provided for under Title VIII of REACH.

4. The new RoHS Directive must take the upcoming REACH review into consideration.

A review of the REACH Regulation is foreseen by 2012, which will inevitably affect the RoHS Directive. Therefore Cefic believes the current recast needs to keep the possibility for assessing and introducing further future legal clarification where needed during the upcoming REACH review, when also further experience with REACH implementation will be available.



Cefic, the European Chemical Industry Council, is concerned that the proposed new RoHS directive overlaps with REACH and fears that it will lead to an unnecessary duplication of procedures and conflicting requirements on electrical and electronic equipment.

The Commission gives two reasons for the revision: the commitment to develop a better regulatory environment and to review the measures provided for in the Directive, among others for the adaptation of the list of restricted substances. While Cefic fully supports the Commission's aim to simplify existing legislation, we would like to express our concern at how this is suggested for this specific case, where coherence with REACH appears to be sought but not achieved.

1. Concern: Legal consistency

REACH lays down harmonised rules for the registration, evaluation, authorisation and restriction of chemical substances. The Commission and Member States are entitled to consider Restriction when a substance on its own, in a preparation or in an article poses a risk to human health or the environment that is not adequately controlled and needs to be addressed. Therefore, electrical and electronic equipment (EEE) are articles under REACH.

REACH and RoHS are equally ambitious when it comes to restricting substances posing a risk to human health and the environment. Therefore, the revision of the RoHS directive has to be made consistently with REACH.

Yet, the new RoHS Directive, as currently drafted, provides for the creation of a separate restriction procedure while such a procedure is already in force under the REACH Regulation. Article 4 (7) of the RoHS recast says:

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

Cefic understands the difficulties a merger between RoHS and REACH would raise for the time being. However, legal coherence is imperative and the new RoHS Directive needs to develop in a manner as consistent as possible with REACH.

Cefic believes the Commission's proposal does not provide for the optimum degree of consistency as it leads to duplication of procedures and criteria, inappropriate assessment of substances, unnecessary administrative burdens and bears the risk of conflicting requirements.

Further, the scope of the REACH Regulation will be reviewed by the Commission by 1 June 2012. In the perspective of this review, Cefic considers the text should allow for the possibility to remove additional unnecessary overlaps.

a. Short-term concerns

Cefic considers the Commission's proposal is inconsistent with REACH as it leads to duplication of procedures, inappropriate assessment of substances and unnecessary administrative burdens.



➤ **Avoiding duplication of restriction procedures**

The current RoHS Directive entered into force before REACH. The situation is now different as REACH now applies and provides for a comprehensive restriction procedure, which entered into force on 1 June 2009.

One of the objectives of the revision of the RoHS Directive is to avoid duplication and inconsistencies vis-à-vis other legal instruments; notably REACH. However, the proposal foresees a separate process to adopt restrictions of substances contained in EEE.

In the interest of legal certainty and coherence, Cefic believes it is crucial that any additional procedure for restriction of substances contained in EEE fully follows the procedure laid down under REACH.

➤ **Avoiding inappropriate means for assessment of chemical substances**

The new RoHS Directive proposal involves a Committee composed of waste experts in the assessment of chemical substances. CEFIC doubts this Committee can provide the most appropriate expertise. Within the context of REACH, assessment of chemicals relies on specific bodies, the Risk Assessment Committee and the Socio Economic Analysis Committee. Therefore, Cefic opposes the parallel system envisaged by the RoHS recast proposal and believes assessment of chemicals under RoHS should be dealt with by the Committee REACH refers to in Article 68 and which has the relevant expertise.

Such proposal does not affect the nature of the comitology procedure at stake as both the current proposal and REACH foresee a regulatory procedure with parliamentary scrutiny.

➤ **Avoiding unnecessary administrative burdens**

Article 4 (7) proposes a new list of substances – highlighting them for particular attention – before any risk assessment procedure has been conducted and without expressing a rationale for their selection. Cefic considers this list will inevitably lead to unnecessary additional administrative burdens vis-à-vis Title VIII of REACH. Indeed, the regulation already foresees the conditions under which restriction of substances may be considered. Therefore, there would be no need for a restriction “candidate list” in RoHS.

We therefore request that Annex III be removed from the re-cast.

b. Long-term concern

➤ **Removing remaining overlaps**

REACH is to be reviewed in 2012. Cefic considers the new RoHS Directive needs to take this review as an opportunity to further assess and clarify its relationship with REACH and to foresee the removal of remaining overlaps.

Cefic proposes a new recital to allow for the possibility to assess and introduce such a further clarification where necessary.

2. Suggested amendments

We suggest the following amendments to Art. 4 paragraph 7 and to Annex III.

Amendment 1

Commission proposal	Proposed amendment
<p>Article 4, paragraph 7</p> <p>“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.</p> <p>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).”</p>	<p>Article 4, paragraph 7</p> <p>“When there is an unacceptable risk to human health or the environment, arising from the use of substances, which needs to be addressed on a Community-wide basis, the list of prohibited substances in Annex IV shall be reviewed using the process set out in Articles 68 to 73 of Regulation (EC) No 1907/2006.”</p>

Justification

Evaluation and restriction of substances under RoHS have to be as consistent as possible with REACH. Consistency requires avoiding parallel procedures. Restriction of substances contained in EEE must fall under the REACH procedure and be dealt with using the appropriate expertise.

Amendment 2

Commission proposal	Proposed amendment
<p>Annex III</p> <ol style="list-style-type: none"> 1. Hexabromocyclododecane (HBCDD) 2. Bis (2-ethylhexyl) phthalate (DEHP) 3. Butyl benzyl phthalate (BBP) 4. Dibutylphthalate (DBP) 	<p>Annex III</p> <p>Deleted</p>

Justification

The deletion goes with the deletion in Article 4, paragraph 7.

Amendment 3

Commission proposal	Proposed amendment
	New Recital <i>A thorough analysis of the added value of the RoHS Directive shall be carried out at the upcoming REACH review with a view to integrating Directive 2002/95/EC (RoHS) into Regulation (EC) N° 1907.2006.</i>

Justification

The upcoming REACH review will inevitably affect the RoHS Directive. Therefore, the recast needs to keep the possibility to assess the need for possible further alignment at the occasion of the REACH review.

