

13 February 2008

## **Comments to the second stakeholder consultation on the review of Directive 2002/95/EC**

In response to the invitation of the European Commission to the second stakeholder input on the review of Directive 2002/95/EC on the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment (RoHS), the European Brominated Flame Retardant Industry Panel (EBFRIP) has prepared the following comments. EBFRIP has focused on those consultation themes and potential policy options of direct interest for its members.

### **I. PRODUCT GROUPS TO BE INCLUDED [ARTICLE 6 OF ROHS]**

EBFRIP has no specific comments regarding the potential inclusion of new categories (medical devices and monitoring and control instruments) in the scope of Directive 2002/95/EC except that this inclusion should be in coherence with existing legislation covering already these product groups.

### **II. SUBSTANCES COVERED [ARTICLE 4 OF ROHS]**

EBFRIP supports the proposed option 1 “**Not add any new justified substances under RoHS and deal with them under REACH**”.

The RoHS Directive should be reviewed applying the principles endorsed by the Better Regulation initiative. On this basis, given that Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) is already in place and will be fully operational when the revised RoHS enters into force, it is important to avoid unnecessary duplication or even contradiction between different legislation. In EBFRIP’s view, adding any additional substances to the RoHS Directive would become redundant, as REACH effectively will limit the use of any hazardous materials in all applications, including electric and electronic equipment.

Any addition of new substances to Article 4(1) of the RoHS Directive would imply that either enough is known about these substances to deal with them under REACH or decisions are being made without sound scientific data being available. For industry, the option of adding new substances to the scope of the RoHS Directive would mean an unnecessary duplication of work, in terms of preparation for REACH Registration.

Finally, the problem of interpretation of what is a “justified substance” arises given the lack of any

agreed definition of “justified” included in the Directive.

Since the time needed for the revised RoHS Directive to become operational may be considerable due to the time consuming co-decision procedure, EBFRIP does not support the view that the inclusion of new substances to the RoHS Directive will provide considerable environmental or health benefits ahead of the REACH process.

### **III. TECHNICAL CHANGES TO THE SCOPE OF THE DIRECTIVE**

#### **Option 1: Separate WEEE from RoHS scope**

EBFRIP has no detailed comments on the relationship between the scope of the WEEE and RoHS Directives. However, for the sake of legal clarity we would encourage the European Commission to define precisely the scope of each Directive.

### **V. FACILITATING IMPLEMENTATION**

#### ***Va. Enforcement of the RoHS Directive***

EBFRIP reiterates its support for an effective enforcement of the RoHS Directive as it is important in maintaining equal treatment of economic operators within the Internal Market.

In so doing, it is essential that the relevant national enforcement bodies and laboratories use correct analytical methods to identify the substances covered by the provisions of the RoHS Directive. As such, the European Commission should consider using agreed harmonized international standards and analytical methods and include specific guidance on this particular issue, if not in the Annex to the Directive at least in the guidance documents it regularly updates.

#### ***Vb. Mechanism for exemptions***

On a general note, EBFRIP sees a need for a clear and transparent exemption procedure that enables operators actually to understand the process and contribute to it in the most efficient way possible. In particular, any reference under the RoHS to a chemical substance being exempted in a given application should meet the EU legal definition for a chemical substance under Directive 67/548/EEC, i.e. as “including ... any impurity deriving from the process used”.

A combination of several of the options could be a way forward for reviewing the current mechanism for granting exemptions. EBFRIIP believes the European Commission should take into account the following when considering mechanisms for exemptions:

- The revised RoHS Directive should ensure that Article 4 (1), which lists the substances covered by the RoHS restrictions, is adequately reviewed so that it takes into account all of the exemptions since its entry into force in 2003 and which will be reviewed in the near future in the framework of the procedure established by Article 5 (1)(c).
- The appropriate involvement and consultation of stakeholders through the exemption granting procedures should be guaranteed so that decision-makers can take informed decisions.
- As regards alternatives, these should only be considered if they are scientifically assessed and considered in terms of their environmental and human health impact. Moreover, an alternative should be considered only when its use is technically feasible. Economic operators should be granted enough time to change and adapt their manufacturing processes in order to prevent a distortion of competition and interruption in market availability.
- A standard format for providing information on requested exemptions should be established.
- The exemption procedure should take into consideration the dynamics of different production cycles. Important issues such as supply chain management, product re-design and reliability, which are time and resource consuming, should be taken into account when considering an exemption.
- Other criteria for granting exemptions should be considered, such as whether there is adequate control of the exempted applications throughout the supply chain to ensure that the end use benefits (e.g. consumer safety) are not undermined.

**-ends-**