



- The Restriction of Hazardous Substances Directive (RoHS). Enforcement, Exemptions and “Put on the market”

GUIDELINE (20 November 2006)

## ■ Masthead

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# 150 Days of RoHS – Current Questions on Enforcement, Exemptions and “Put on the market”

The *Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment* (RoHS) became effective on 1 July. Since this date, manufacturers may only place devices in circulation that, in compliance with ElektroG, are free of the specified hazardous substances.

The BITKOM guideline issued on 15 June detailed the specific demands of RoHS. (Please see attached file).



BITKOM-RoHS  
and\_2006\_06\_15.d

The RoHS from June 2006 is not the same as the RoHS in November 2006: many new questions regarding dealings with RoHS have surfaced since the summer. New exceptions have been added, the term “Put on the market” has been further discussed, and the first measures of enforcement in some of the 25 member countries have been initiated.

The existing guideline compiles the current status of these developments:

- "Enforcement" (pages 6-14)
- "Exemptions" (pages 15-20)
- "Put on the market"(pages 21-25)

This current summary is a snapshot. Further updates on decisive questions will be available for PDF downloads at: [http://www.bitkom.org/de/themen\\_gremien/36283\\_40032.aspx](http://www.bitkom.org/de/themen_gremien/36283_40032.aspx).

# Content

<b>1</b>	<b>Enforcement.....</b>	<b>6</b>
1.1	Telephone interview with Günther Albrecht (Ministry of the Environment, State of Baden-Württemberg, Referat 24 Abfallwirtschaft und Recht) 2 November 2006.....	6
1.2	EICTA-letter (draft) to the National Weights & Measure Laboratory (NWML) in regards to their interpretation if carrying cases can be included in the scope 2 November 2006.....	10
1.3	Chris Smith (NWML) presentation to Intellect 6 October 2006.....	11
1.4	EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT) 27 July 2006 .....	12
1.5	EICTA-letter to DG ENT 20 July 2006.....	12
1.6	EICTA letter to Peter Carl (DG ENV) 12 July 2006.....	12
1.7	Further information on Enforcement .....	13
1.7.1	RoHS transposition in the 25 MS.....	13
1.7.2	Sampling and Testing .....	13
1.7.3	Time schedule .....	14
<b>2</b>	<b>Exemptions.....</b>	<b>15</b>
2.1	Letter from Klaus Koegler (DG ENV) to EICTA position paper on WUE 26 October 2006.....	15
2.2	Oral response from Anna Passera (DG ENV) to EICTA position paper on WUE 3 October 2006 .....	16
2.3	EICTA position paper on WUE 29 September 2006 .....	16
2.4	Email from Steve Bushnell on Whole Unit Exchange (WUE) 21 July 2006.....	17
2.5	Exemptions 21-29, published in the Official Journal of the EU 14 October 2006.....	18
2.6	Letter from Timo Makela (DG ENV) to Mark MacGann (EICTA) 1 August 2006 as a response to MacGann's letter from 20 July 2006 .....	18
2.7	Ökoinstitut: Adaptation to scientific and technical progress under Directive 2002/95/EC – final report, final version 28 July 2006 .....	19

2.8	EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT) 27 July 2006 .....	20
2.9	EICTA draft letter to Mr. Carl DG (ENV) around 20 July 2006 .....	20
2.10	TAC minutes 26 June 2006 .....	20
<b>3</b>	<b>Put-on-the-market (POM) .....</b>	<b>21</b>
3.1	Stavros Dimas (DG ENV) answering three written questions by MEP Avril Doyle (PPE-DE) from July 2006 29 August 2006 .....	21
3.2	Update of FAQs August 2006 .....	22
3.3	EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT) 27 July 2006 and follow-up Email 11 August 2006 .....	22
3.4	EICTA Position on “Placing a Product on the EU Market”. A common understanding 26 July 2006 .....	23
3.5	EICTA letter to Peter Carl (DG ENV) 13 July 2006 .....	24
3.6	Transposition of POM in the MS 22 August & 15 June 2006 .....	24
3.6.1	Update on POM-interpretation in Check Republic, Greece, Italy and Slovakia 22 August 2006 .....	24
3.6.2	Four groups of different interpretation of POM 15 June 2006 .....	25
3.7	Elements for a Horizontal Legislative Approach to Technical Harmonisation ENTR/C-1/McM D(2005) SOGS N529 EN 23 March 2006 .....	25

# 1 Enforcement

The following recent documents, meetings or email correspondence have influenced the process of enforcement:

1.1	Telephone interview with Günther Albrecht (Ministry of the Environment, State of Baden-Württemberg, Referat 24 Abfallwirtschaft und Recht) 2 November 2006.....	6
1.2	EICTA-letter (draft) to the National Weights & Measure Laboratory (NWML) in regards to their interpretation if carrying cases can be included in the scope 2 November 2006.....	10
1.3	Chris Smith (NWML) presentation to Intellect 6 October 2006.....	11
1.4	EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT) 27 July 2006 .....	12
1.5	EICTA-letter to DG ENT 20 July 2006.....	12
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1.7	Further information on Enforcement .....	13
1.7.1	RoHS transposition in the 25 MS.....	13
1.7.2	Sampling and Testing .....	13
1.7.3	Time schedule .....	14
1.1	<b>Telephone interview with Günther Albrecht (Ministry of the Environment, State of Baden-Württemberg, Referat 24 Abfallwirtschaft und Recht), 2 November 2006</b>	

Günther Albrecht gives an update on the status quo on market surveillance in Germany

- There will be no common or standardised enforcement in Germany. Each state is responsible for its own market surveillance and enforcement practices.
  - In each state, the „unteren Abfallrechtsbehörden“ (Stadt- und Landkreise, administrative districts) will be responsible („competent public authorities“).
  - The federal state Baden-Württemberg (BW) plans education and training for its 44 public authorities.
  - BW will use the RoHS Enforcement Guidance Document from the UK Department of Trade & Industry as one source of inspiration (see box on page 8).

- Market surveillance will be two-fold:
  - Regular market surveillance: Each public authority will carry out enforcement practices driven by its own understanding of its administrative duty according to RoHS.
  - „Anlassvornahme“: Each public authority will have to decide according to its administrative discretion whether to follow up on suspicious facts indicated by others (producers, public etc.).
- Sampling: XRF analysis
  - First on-site approximation of RoHS-compliance through handhelds
  - Second analysis, if on-site approximation indicates non-compliance
  - In question: who reimburses the damage caused by destructive testing (for example a 2,000 Euro panel screen)
- States are in negotiations with BMU on the following issues:
  - Determining the competent body for companies with a head quarter in Germany:  
If a company sells its products in more than one state (which is quite likely), the responsible public authority has to be determined. The competent body will be the public authority in whose jurisdiction the headquarters of the company are located.
  - Determining the competent body for companies with no headquarter in Germany:  
If a company is located outside of Germany (no subsidiary in Germany) and merely imports into Germany, no single public authority can claim responsibility in terms of enforcement. For these companies, the states have suggested to install a clearing house which could be hosted by the German Federal Agency for Environmental Protection (Umweltbundesamt – UBA).
  - The next meeting of the LAGA-„Ausschuss für Produktverantwortung und Rücknahmepflichten“ (APV) will be in mid-January 2007.

## UK Enforcement Guidance Documents

### 1. UK Department of Trade & Industry and RoHS Enforcement Authorities Informal Network: RoHS Enforcement Guidance Document



2006\_05 DTI et al -  
RoHS Enforcement Gd

- The 16-page-document is informative and advisory, but has no legal authority. Individual RoHS enforcement authorities are bound by their own national legal structures and can only apply this guidance within the confines of those structures. Later editions are planned (p.10).
  - Three sections
    - Introduction: Aims & Objectives
    - RoHS Compliance Documentation
    - Sampling & Testing Issues
  - Section 1: Introduction
    - Two target groups: MS and industry
    - Three principles: common interpretation of RoHS; presumption of conformity; self-declaration by producers
    - Enforcement process: MS to choose EEE categories by referring to a choice of eight potential criteria (see p. 4)
  - Section 2: RoHS Compliance Documentation
    - Step-by-step approach to RoHS compliance investigations with two initial routes to self-declaration
    - Route A for companies with internal quality assurance systems; route B for companies that need a provision of compliance documentation
    - See also figure 1: Flow Chart for RoHS Compliance Assessment Using Documentation (p. 6); fig. 2: Flow Chart for ROHS Enforcement Action (p. 7); table 1: Typical List of Overview Documentation (p. 8); table 2: Typical Compliance Documentation List (p. 9)
  - Section 3: Sampling and Testing Issues (p. 10)
    - Harmonized approach for sample preparation and analytical testing, for example: IEC 62321.Ed.1, 111/54/CD which contains in its Annex the following three pieces of information:
      - Guidance on disassembly
      - Sample selection
      - Application of test methods
    - Reference material producers (such as the Institute of Reference Materials and Measurements of the European Commission, [www.irmm.jrc.be](http://www.irmm.jrc.be)) develop reference materials



- Screening (p. 11)
  - Screening tool: Energy dispersive x-ray fluorescence (ED-XRF)
  - Two instruments: handheld units for on-site analysis vs. bench-top laboratory systems for laboratory analysis
  - Three results possible: “pass”, “fail” and “borderline”
  - Further analysis necessary if “borderline” or “fail” due to an exempted application
- Sampling: To address cost, time and sample preparation constraints, three sampling strategies are suggested (p. 12)
  - materials/applications of “high concern” focuses on taking samples from applications where restricted substances have been used historically, such as PVC, Polystyrene etc. (more examples on page 13)
  - samples that can be separated with ordinary tools
  - homogenizing techniques for components that are composed of two or more homogeneous materials (definition of “homogeneous materials” on page 14, three criteria for homogenizing techniques on page 16)

## 2. UK National Weights & Measure Laboratory (NWML)

- NWML is the Executive Agency of the Department of Trade & Industry with responsibility for ensuring that all trade measurements are accurate, legal and fair to buyer and seller ([www.rohs.gov.uk](http://www.rohs.gov.uk))
- In May, the NWML has published the „RoHS Submission Response“. This six-page response template (see object below) is an optional, standardised response – section 8 requires a producer to respond to a request within 28 days – and requires the following info:



NWML - RoHS  
response template.doc

- Authorised representative has to indicate by signature if an organisation is out of RoHS-scope (p.1)
- Contact details (p.1)
- Organisation (importer or OEM, size, ...) (p.2)
- Certification or registration schemes (p.2)
- EEE product range (“product-level”) (p.3)
- Internal control processes (“procedure-level”) (p.4)
- Compliance records as required in section 9 (p.5)
- Self declaration statement signed by a responsible person (p.6)

## 1.2 EICTA-letter (draft) to the National Weights & Measure Laboratory (NWML) in regards to their interpretation if carrying cases can be included in the scope, 2 November 2006



2006\_11\_02  
EICTA-NWML\_draft.d

- The National Weights & Measure Laboratory (NWML), an Executive Agency of the British Department of Trade & Industry (DTI) has taken on a very specific position on the scope of RoHS regarding carrying cases etc. (see box on p. 9)
- In the FAQ of NWML given at [www.rohs.gov.uk/FAQs.aspx#16](http://www.rohs.gov.uk/FAQs.aspx#16) it is stated that: “All parts sold as part of the product are capable of being considered part of the product for the purposes of RoHS. Whether a part is considered part of the product may depend upon such considerations as interdependence, expected inclusion in WEEE and product description.”
  - This may include items such as:
    - playing pieces or dice in a game requiring electricity to play or
    - cases supplied with the product (example: a protective case supplied with a power tool).
  - It does not include items such as
    - packaging
    - instruction manuals
    - consumables such as printer cartridges, jigsaw blades and drill bits.
- In a meeting with Intellect<sup>1</sup>, NWML confirmed this interpretation of the scope.
- EICTA’s view:
  - Only “parts sold as part of the product” fall in scope of RoHS if they are clearly electrical and electronic equipment as defined in Article 3a) of RoHS.
  - Electrical and electronic equipment is defined as “equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in Annex IA to Directive 2002/96/EC (WEEE) and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current.”

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<sup>1</sup> The trade association for the UK hi-tech industry ([www.intellectuk.org](http://www.intellectuk.org))

- For the example provided by NWML, protective cases certainly do not fall under this definition and are not part of, or dependent on, the power tool in any way.
- You do not use your protective case while operating the power tool, at least not under normal use conditions.
- The NWML stated position also appears to conflict with May '06 guidance provided by the UK DTI to the UK Luminary Association (see attached). In this position it is stated that *“only electrical parts of the luminaries, such as lampholder, cable, plug, fuse, ballast, lamp (bulb), etc. are required to comply with the Regulations, the other parts, such as the body, shade, etc. being excluded.”*



2006\_05  
RoHS\_Luminary Guide

### 1.3 Chris Smith (NWML) presentation to Intellect, 6 October 2006



2006\_10\_04  
NWML.ppt



2006\_10\_04 NWML  
notes.doc

- Scope
  - most MS consider that carrying cases are in scope when sold as an integral part
  - Different interpretations of fixed installations / large scale stationary industrial tools
- Enforcement in the UK
  - Companies and products will be selected on the basis of intelligence and risk
  - XRF testing will be conducted
  - There will be no testing at customs
  - Courts will decide if standards fee of 5,000 pounds will apply per batch, product or individual unit
  - NWML has developed the “Approval Scheme Protocol” on criteria for robust 3<sup>rd</sup> party certification
  - Some companies have already received the NWML documentation request (“RoHS Submission Response; see page 9).
- Proposed EICTA action
  - Contact France or Denmark to ask for EICTA input into the Manual of Decisions
  - Monitor “mandatory compliance documentation” in Greece
  - Deliver a list of RoHS enforcement authorities per MS to Anna Passera (DG ENV)

#### 1.4 EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT), 27 July 2006



Notes EICTA  
meeting with Michel C

- COM to endorse MS enforcement guidelines, amongst others through a link on website

#### 1.5 EICTA-letter to DG ENT, 20 July 2006



Meeting with DG  
Enterprise on WEEE a



TMakelafollowupMtg.  
pdf

- EICTA informs DG Env about worrying developments in Greece (see appendix)

#### 1.6 EICTA letter to Peter Carl (DG ENV), 12 July 2006



EICTA draft letter to  
Mr Carl .msg



Draft Letter to Peter  
Carl 06-07-13.doc



Enforcement  
Guidance Document 2

- EICTA welcomes initiative by TAC members to set up a network of MS enforcement authorities including the Enforcement Guidance Document in May 2006 (see above)
- EICTA calls on COM to be proactive in supporting this work:
  - endorse MS enforcement guidelines through a link on website
  - include a link to the RoHS Enforcement Guidance Document on [http://ec.europa.eu/environment/waste/weee\\_index.htm](http://ec.europa.eu/environment/waste/weee_index.htm)
  - encourage wider dissemination and consultation on this document
  - support the new “network of enforcement authorities”

## 1.7 Further information on Enforcement

### 1.7.1 RoHS transposition in the 25 MS

- On 14 September, the consultancy “business alert” updated its overview on transposition of RoHS and WEEE:

<http://gbcode.tdctrade.com/gb/www.tdctrade.com/alert/euweeenew.htm>

### 1.7.2 Sampling and Testing

#### a. Scope (“Manual of Decisions”)

- On behalf of the “RoHS Enforcement Authorities Informal Networks,” France and Denmark are working on the “Manual of Decisions”
  - in addition to the FAQs on WEEE/RoHS
  - guidance document for questions of scope
  - most likely a list of products that are in scope of RoHS (only undisputable products)
  - the publication is supposed to be published in April 2007

#### b. Measurement Methods (IEC 111 WG 3, CDV 62321)

“Procedures for the determination of levels of six regulated substances (Lead, Mercury, Cadmium, Hexavalent Chromium, Polybrominated Biphenyls, Polybrominated Diphenyl Ethers) in electrotechnical products”

- Objectives: guidance on disassembly, sample selection, application of test methods
- The Committee Draft for Vote (CDV) was declined by the NCs (national committees); 2/3 positive votes needed but only 52% supported (12 out of 23)
- Main reasons: Disagreement about measuring method for hexavalent chromium and the method detecting PBB/PBDE (Gas chromatography with mass spectrometry, GC/MS)
- Timeline: new approach during the face-to-face meeting in Beijing, Nov 2006
- <http://www.iec.ch/cgi-bin/procgi.pl/www/iecwww.p?wwwlang=E&wwwprog=seaz22.p&search=iecnumber&header=IEC&pubno=62321&part=&se=&submit=Submit>

#### c. Sample Preparation (IEC TC 111 HWG 3)

- Objective: guidance on how to prepare samples for measuring RoHS-compliance (“from the product to the sample”)
- Standard to be published as PAS in March 2007

#### d. Compliance Assessment (IEC TC 111 PT62476)

- The Project Team (PT) shall produce a Technical Specification (TS) which serves as a guidance for assessing RoHS-compliance of finished goods
- Kick-off meeting 18-19 September

■ Time schedule:

- First CD working document, 15 December 2006
- Second meeting in conjunction with TC111 plenary, February 2007
- Circulation to NC, April 2007
- Compilation of NC comments, June 2007
- Third meeting, draft CD/CDV, July 2007

### 1.7.3 Time schedule

- Next Joint EE CMD Group, meeting, 20 November
- Next TAC meeting, 22 November 2006
  - MS reporting on enforcement activities put in place
  - Exemptions: future steps
  - Review of RoHS: future steps
- Conference on China-RoHS, Beijing, 4-5 December 2006
  - Objectives of the conference
    - better understand the requirements and the implementation of the respective legislations (EU vs. China) to promote environmentally sustainable trade in Electrical and Electronic Equipment
    - prior to the conference the main differences between both legislations will be identified and addressed during the event (“platform for exchange”).
    - follow-up activities should focus on compatibility and the reduction of compliance cost on both sides.



2006\_11\_02 EICTA



2006\_12\_04

China-RoHS Meeting conference speakers.

- Coordination meeting with EU COM, 24 November 2006
  - EU briefing relating to the Chinese ACPEIP
  - Key issues and questions to be raised with the Chinese officials
  - Presentations / speeches of the industry to the conference
- Three EICTA-presentations on RoHS-Conference (for additional speakers and their topics, see the embedded object)
  - Scope and catalogue (Markus Stutz, Dell)
  - Information requirements and standards (Ferdinand Quella, Siemens)
  - Compliance in the supply chain (Terho Markus or Siu Hera, Nokia)
- Publication of the “Manual of Decisions”, April 2007

## 2 Exemptions

The following recent documents, meetings or email correspondence have influenced the process of exemptions. Section 2.1 – 2.4 are on the specific issue of “Whole Unit Exchange” (WUE) and Section 2.5 – 2.10 on exemptions in general.

2.1	Letter from Klaus Koegler (DG ENV) to EICTA position paper on WUE 26 October 2006.....	15
2.2	Oral response from Anna Passera (DG ENV) to EICTA position paper on WUE 3 October 2006 .....	16
2.3	EICTA position paper on WUE 29 September 2006 .....	16
2.4	Email from Steve Bushnell on Whole Unit Exchange (WUE) 21 July 2006 .....	17
2.5	Exemptions 21-29, published in the Official Journal of the EU 14 October 2006.....	18
2.6	Letter from Timo Makela (DG ENV) to Mark MacGann (EICTA) 1 August 2006, as a response to MacGann’s letter from 20 July 2006 .....	18
2.7	Ökoinstitut: Adaptation to scientific and technical progress under Directive 2002/95/EC – final report, final version 28 July 2006 .....	19
2.8	EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT) 27 July 2006 .....	20
2.9	EICTA draft letter to Mr. Carl DG (ENV) around 20 July 2006 .....	20
2.10	TAC minutes 26 June 2006 .....	20

### 2.1 Letter from Klaus Koegler (DG ENV) to EICTA position paper on WUE, 26 October 2006



2006\_10\_26 COM  
replyWUE.pdf

- Key message: WUE is not allowed when it is not RoHS compliant and replacement is not considered repair. Although RoHS does not provide a definition of “spare parts,” it seems certain that the term “spare part” is opposite to “whole unit”. According to Art. 2.3, spare parts serve for the “repair” and not for the “exchange”/”replacement”.

- Perspective: Figures regarding the quantity and value of the EEE that is replaced or repaired in Europe will be needed if the subject will be covered by the review of RoHS. Information about the “real market dimension of the issue” is necessary.
- Background information
  - COM and TAC have no legal power to change the text of RoHS; only EP and Council can act on co-decision.
  - FAQ’s address questions of a general nature. Therefore, DG ENV does not “consider that the issue of WUE needs to be included into the FAQ”.
- EICTA response to the above letter, TelCo on 2 November 2006
  - thank-you-letter for response
  - informs that EICTA will prepare sufficient data for the review process

## 2.2 Oral response from Anna Passera (DG ENV) to EICTA position paper on WUE, 3 October 2006



ROHS EICTA further  
information on the WI

- The “market volumes” section of the EICTA paper (see page 4) is insufficient and, as requested by Mr. Makela in June, more market data should be presented to illustrate the request.
- EICTA action: In order to substantiate the position, EICTA should send estimates from more companies, so the European Commission is able to quantify the number of repair parts affected by this issue.

## 2.3 EICTA position paper on WUE, 29 September 2006



2006\_09\_29 EICTA  
WUE positionpaper.p

Art. 2.3 states that “This directive does not apply to spare parts for the repair, or the reuse, of ...”; however, there is no definition of “spare parts”. This leads to the question whether the whole unit repair process as described in the position paper is exempted. In this paper, EICTA draws attention to the following aspects:

- Certain spare parts can only be replaced by identical parts. For instance, notebooks that are integrated in high-end servers need to physically fit in the server cabinet and run the same software. A similar but not identical notebook might not fulfill these requirements. Other examples are rack-mounted modular components.



- Existing parts inventories will quickly run out. That is why the industry will need clarification soon.
- Repairs are typically required on only a small fraction of equipment sold. In the case of monitors, it is less than one percent.
- EICTA suggests that COM updates the FAQ's to clarify the following aspects:
  - Art. 2.3 should apply to the whole unit repair process.
  - Allowance for whole unit repairs of products is consistent with other EU Directives. For instance, EMC Directive 89/336/EEC defines "spare parts" as "an item intended to replace a defective or worn out item or apparatus, equipment or system previously placed and put into services on the EEA market. A typical repair operation would be replacement by a spare part."
  - Duration of whole unit repair should be limited to five years for commercial equipment and three years for consumer products.
  - COM and TAC should facilitate the reuse of parts by recommending that "used" whole unit parts used for repair of products put on the market prior to 1 July 2006, be exempted from RoHS.

#### 2.4 Email from Steve Bushnell on Whole Unit Exchange (WUE), 21 July 2006



RoHS - Whole Unit  
Exchange (WUE) .msi

- DG ENV has requested information on the following aspects of WUE:
  - Examples of whole units
  - Explanation of the replacement process
  - Supply chain for replacement products
  - Market volumes
  - Reason why many companies only have one repair centre which is outside the EU
- Steve Bushnell has drafted a letter which provides this kind of information(see above)
- IBM examples of whole WUE:
  - TotalStorage Switch L10
  - IBM TotalStorage 3581 Tape Autoloader Express
  - ThinkPad Notebook Computers used in IBM Z-series mainframe computers

## 2.5 Exemptions 21-29, published in the Official Journal of the EU, 14 October 2006



2006\_10\_14  
exemption 21-27.pdf



2006\_10\_14  
exemption #28.pdf



2006\_10\_14  
exemption #29.pdf

21. Lead and cadmium in printing inks for the application of enamels on borosilicate glass.
22. Lead as impurity in RIG (rare earth iron garnet) Faraday rotators used for fibre optic communications systems.
23. Lead in finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with NiFe lead frames and lead in finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with copper lead frames.
24. Lead in solders for the soldering to machined through hole discoidal and planar array ceramic multilayer capacitors.
25. Lead oxide in plasma display panels (PDP) and surface conduction electron emitter displays (SED) used in structural elements; notably in the front and rear glass dielectric layer, the bus electrode, the black stripe, the address electrode, the barrier ribs, the seal frit and frit ring as well as in print pastes.
26. Lead oxide in the glass envelope of Black Light Blue (BLB) lamps.
27. Lead alloys as solder for transducers used in high-powered (designated to operate for several hours at acoustic power levels of 125 dB SPL and above) loudspeakers.
28. Hexavalent chromium in corrosive preventive coatings of unpainted metal sheetings and fasteners used for corrosion protection and Electromagnetic Interference Shielding in equipment falling under category three of Directive 2002/96/EC (IT and telecommunications equipment). Exemption granted until 1 July 2007.
29. Lead bound in crystal glass as defined in Annex I (Categories 1, 2, 3, and 4) of Council Directive 69/493/EEC.

## 2.6 Letter from Timo Makela (DG ENV) to Mark MacGann (EICTA), 1 August 2006, as a response to MacGann's letter from 20 July 2006



Makela1August06.pdf

- ... whole unit exchange is currently being considered by the Commission services.
- The approved exemptions are those that are listed in Commission Decisions and that have been adopted and published in the Official Journal of the European Union:
  - Commission Decision 2005/717/EC

- Commission Decision 2005/747/EC
- Commission Decision 2006/310/EC



27120051015en004828020051025en001811520060428en00380050.pdf



0019.pdf



0039.pdf

- TAC has given a “positive opinion” on three additional Draft Commission Decisions. These three decisions are “only preparatory acts” ... and they have “no legal value, i.e. they cannot create any legal rights or obligations.” They will have legal value once the EP has passed them. This should happen within the next few weeks.
  - 1) Draft Commission Decision ... for applications of lead and cadmium
  - 2) Draft Commission Decision ... for applications of hexavalent chromium
  - 3) Draft Commission Decision ... for applications of lead in crystal glass
- The exemption request from Xerox-Océ was not presented for a formal vote at the TAC meeting in February because MS indicated a severe lack of support.

## 2.7 Ökoinstitut: Adaptation to scientific and technical progress under Directive 2002/95/EC – final report, final version, 28 July 2006



Ökoinstitut\  
rohs\_report.pdf

This final 148-page-report gives information on the following aspects in regards to the exemption process:

- Background and Objectives (p. 1)
- General Procedure (p. 2)
- Scope (p. 2)
- Results (p. 9)
- General aspects – Cross section Stakeholder Documents (p. 10)
- Requests open for recommendation (p. 149)
- List of external experts (p. 133)
- Overall conclusions (p. 134)
- Annex (p. 137)
  - Annex I: Monthly reports 1-9
  - Annex II: Thomson product list
  - Annex III: Swatch additional information

## 2.8 EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT), 27 July 2006



Notes EICTA  
meeting with Michel C

- TAC approved the three Draft Commission Decisions above
- These “preparatory acts” are now under scrutiny by EP
- A significant number of MS have opposed the EICTA exemption request for copier and printer parts (in February as well as in June). Catinat and Pinelli recommend EICTA to explain to those MS why the exemptions are needed.

## 2.9 EICTA draft letter to Mr. Carl DG (ENV), around 20 July 2006



EICTA draft letter to  
Mr Carl .msg

- EICTA statement: The Commission does not give proper feedback on the stakeholder input within the frame of the consultation process. The role of the Commission in the process of withdrawing exemptions remains unclear (for example in the case of copier and printer parts).
- EICTA suggestion: a roadmap to proceed with pending exemptions is needed.

## 2.10 TAC minutes, 26 June 2006



TAC26thJune\_Agend  
a.pdf



TAC26thJune\_Minut  
es.pdf

- Exemption 22 (Pb in RIG): New evidence on compliant alternatives; COM explores possibilities to modify the Draft Decision accordingly.
- Exemption 28 (Cr VI): qualified majority; however, the exemption has been restricted for the ICT sector only
- Exemption 29 (Crystal glass): qualified majority
- Request for exemption on closed loop systems: COM will ask MS and then decide whether the request will be submitted for vote again.
- The next meeting has not yet been scheduled.
- The agenda for the TAC meeting (left object above) contains a Draft Commission Decision of ... exemptions for applications of lead and cadmium (exemptions number 21-27 on page 7 of the agenda).

### 3 Put-on-the-market (POM)

The following recent documents, meetings or email correspondence are relevant to the interpretation of POM:

3.1	Stavros Dimas (DG ENV) answering three written questions by MEP Avril Doyle (PPE-DE) from July 2006 29 August 2006 .....	21
3.2	Update of FAQs August 2006 .....	22
3.3	EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT), 27 July 2006 and follow-up Email 11 August 2006 .....	22
3.4	EICTA Position on “Placing a Product on the EU Market”. A common understanding 26 July 2006 .....	23
3.5	EICTA letter to Peter Carl (DG ENV) 13 July 2006 .....	24
3.6	Transposition of POM in the MS 22 August & 15 June 2006 .....	24
3.7	Elements for a Horizontal Legislative Approach to Technical Harmonisation, ENTR/C-1/McM D(2005) SOGS N529 EN 23 March 2006 .....	25
3.1	<b>Stavros Dimas (DG ENV) answering three written questions by MEP Avril Doyle (PPE-DE) from July 2006, 29 August 2006</b>	



ROHS Put on the  
market Question by N

- Question 1: Do Member States (MS) apply RoHS in conformity with the established internal market concept of POM (“the first introduction, by a manufacturer or importer, of a product into the chain of commerce within the EU single market that may eventually lead to a final sale to the consumer”)?
- Answer: POM refers to the “initial action of making a product available for the first time on the Community market. This takes place when the product is transferred from the producer to a distributor or final consumer or user ...” COM will have finished a national conformity check by mid-2007 and then initiate infringement procedures if necessary. COM is holding regular meetings with business associations ... to provide guidance.

- Comment 1a: Doyle refers to manufacturer *and* importer while Dimas refers to producer (= manufacturer) *only* according to the FAQ's. However, the fact that Dimas does not mention importers does not necessarily mean that importers are not included.
- Comment 1b: Doyle refers to a "chain of commerce" that eventually reaches the end user while Dimas names three ways of entry into the market (distributor, final consumer or user). However, there is no indication that this slight difference in wording reflects a different understanding of POM.
- Question 2: Is COM satisfied that RoHS will not apply to products which have already been POM within the EU prior to the 1 July deadline?
- Answer: RoHS will indeed not apply to products that have been POM prior to that date.
- Question 3: What steps is COM taking to make businesses ... aware of these deadlines and to ensure that MS inform all concerned operators ...?
- Answer: The Technical Adaptation Committee (TAC), facilitates the exchange of information and best practice among MS' authorities. However, it should be noted that the MS are fully responsible for the implementation of RoHS.

### 3.2 Update of FAQs, August 2006



FAQ's on RoHS and WEEE 2006\_06.pdf



FAQ's on RoHS and WEEE 2006\_08.pdf

- The wording on pages 15-16 has not been changed (version June 2006 vs. August 2006). Hence, COM has not adjusted its understanding of POM.

### 3.3 EICTA meeting with Michel Catinat and Dino Pinelli (DG ENT), 27 July 2006, and follow-up Email, 11 August 2006



Notes EICTA meeting with Michel C

- EICTA-Info: Czech Republic, Greece, Italy and Slovakia have "national market" definitions of POM.
- COM-response: COM is about to finish an assessment on how RoHS legislation has been transposed.
- EICTA-comment: This kind of "conformity assessment" only checks main transposition legal measures but does not look at problems created through further implementation measures at the national level.

- EICTA-action: To substantiate the concerns, EICTA sends Catinat/Pinelli a copy of the legislation mentioned in the Annex of the EICTA follow-up-letter sent to Makela (see email and enclosed pdf).



EICTA POM response  
for the Commission.mr

### 3.4 EICTA Position on “Placing a Product on the EU Market”. A common understanding, 26 July 2006



EICTA Position on  
POM.pdf



POM EICTA-position  
on the interpretation

- A product is "POM" and "made available", if the following five criteria are fulfilled: (p. 1): The product is ...
  - "finished", e.g. it has left the "design und manufacturing process"
  - "destined for distribution"
  - "physically in the EU"
  - "made available for the first time"
  - "immediately available upon request"
- A transfer from the manufacturer's production unit to its own storage unit should be considered as a POM (p. 2).
- Additional comments to the five criteria above (p.3):
  - "finished"
    - If a company carries out "some final tasks" such as CE-marking or user documentation in local languages, the product has not been POM.
    - Transferred components, subassemblies and unfinished products are only POM, if they are "intended to be placed on the market as such".
  - "destined for distribution"
    - Products that are imported, manufactured or stored within the EU territory are not POM if they are intended for export outside of the EU.
  - "physically within EU territory"
    - The "precise location" of a product is not a determining factor, as long as they are stored within EU territory; for example, placing a finished product in an own storage facility would fulfill the requirement.
    - After customs clearance finished products should be considered as POM.

- "for the first time"

- POM is irrespective of ownership (manufacturer, authorised representative or importer).
- "Commercial practices" should be taken into account when deciding whether a product has been POM. It would be disproportionate to require the manufacturer to establish an external legal entity for distribution purposes, merely for the sake of getting a product POM.

- "immediately available"

- A product is POM either when it is legally transferred to another "legal entity" or physically transferred to a different "business division".
- The "moment in time" of POM does not necessarily correspond to the moment it has been purchased by the customer.

- Five illustrations on POM (p. 5-6)

- The five figures demonstrate the difference of the term "POM", which is a single point in time, in regards to "made available", which is a time line beginning at the point of POM. Depending on the location of production and storage and on the involvement of different actors, five specific cases of "POM" and "made available" can be identified.

### 3.5 EICTA letter to Peter Carl (DG ENV), 13 July 2006



EICTA draft letter to  
Mr Carl .msg

- EICTA has reason to believe that some Member States continue to diverge from, or make additional requirements to, the EU interpretation of "POM" (see Annex in the email). This information is often given in Government circulars, guidance documents or written statements from Ministry officials rather than in the law itself.
- EICTA asks COM to explore the application of POM by the Czech Republic, Greece, Italy and Slovakia and, if possible, request written confirmation that these countries will apply the Blue Book definition of POM. In future, the direct and continuous exchange of information with the unit responsible for pre-infringement procedures would be welcomed.

### 3.6 Transposition of POM in the MS, 22 August & 15 June 2006

#### 3.6.1 Update on POM-interpretation in Check Republic, Greece, Italy and Slovakia, 22 August 2006



POM in CS, G, I and  
SLO.doc



### 3.6.2 Four groups of different interpretation of POM, 15 June 2006



POM transposition  
status 2006\_06.doc

The list shows how 25 EU MS interpret POM in their national legislation:

- Group 1 – Countries that might consider POM as sale to the final consumer
  - none
- Group 2 – Countries that might consider POM as first transfer on the national market
  - Sub-group 2a – Countries that have confirmed the national interpretation or for which there is insufficient information: Czech Republic, Lithuania
  - Sub-group 2b – Countries that have indicated that they might/will change their interpretation: Portugal, Slovakia
- Group 3 – Countries that claim they apply the EU definition lack official confirmation:
  - Austria, Spain, Cyprus, Estonia, Denmark, Hungary, Latvia, Poland, Slovenia, Sweden
- Group 4 – Countries which we are certain will apply the EU interpretation:
  - Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, UK, Portugal

### 3.7 Elements for a Horizontal Legislative Approach to Technical Harmonisation, ENTR/C-1/McM D(2005) SOGS N529 EN, 23 March 2006



draft\_certif\_2005\_1  
6\_rev2\_foreword.pdf

This paper, accompanied by a foreword, was published by DG ENT. On pages 30-31 (35-36) it defines “making available on the market”, “placing on the market” and “putting into service”.

- Making available on the market
  - This term will replace “placing on the market” in those provisions where the reference to the first making available on the EU market is too restrictive.
    - Example 1: Member States must ensure that products are made available on the market only if they comply with the requirements of the directive.
    - Example 2: Member states may not restrict the making available of a product which complies with the requirements of the directive.

- Making available covers the whole period during which the product is circulating on the EU market, starting from the moment it is first made available (i.e. “placing on the market”) and ending with the final transfer to the end user. For certain products (assembled and/or installed directly at the place of the end user), this is the moment when the product is “put into service”.
- The term “making available” does not need a definition in the horizontal instrument. A guidance document might clarify which situations are covered by this concept.
- Placing on the market
  - The first making available of a product on the Community market (for distribution, consumption or use).
- Putting into service
  - The first use of a product in the Community by the end user. This notion is reserved to the provisions relating to the control of the product at the moment it is first used by the end user.

The German Association for Information Technology, Telecommunications and New Media (BITKOM) represents a total of more than 1,000 companies. Its 800 regular members employ some 700,000 people and generate revenues of 120 billion Euro. They include manufactures of ITC equipment and providers of software, IT services, telecommunication services and content. BITKOM is working, in particular, to improve the regulatory framework in Germany, for modernization of the education system and for an economic policy which encourages innovation.

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