European Parliament
2014-2019

Committee on the Environment, Public Health and Food Safety

2017/0013(COD)

28.4.2017

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment
(COM(2017)0038 – C8-0021/2017 – 2017/0013(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Adina-Ioana Vălean

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment
(COM(2017)0038 – C8-0021/2017 – 2017/0013(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2017)0038),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0021/2017),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of XX 2017[1],

– having regard to the opinion of the Committee of the Regions of XX 2017[2],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Legal Affairs (A8-0000/2017),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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1 [OJ C 0, 0.0.0000, p. 0/Not yet published in the Official Journal].
2 [OJ C 0, 0.0.0000, p. 0/Not yet published in the Official Journal].

Amendment 1

Proposal for a directive
Article 1 – paragraph 1 – point 4 – point -a (new)
Directive 2011/65/EU
Article 5 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	(-a) in paragraph 1, the following subparagraph is added:
	'An individual delegated act may cover a limited number of technically-related or interdependent measures.'

Or. en

Amendment 2

Proposal for a directive
Article 1 – paragraph 1 – point 4 – point a a (new)
Directive 2011/65/EU
Article 5 – paragraph 4 – point b a (new)

Text proposed by the Commission	*Amendment*
	(aa) in paragraph 4, the following point is inserted:
	'(ba) within one month of receipt of an application, provide to the applicant, the Member States and the European Parliament a clear timeline for the adoption of its decision.'

Or. en

Amendment 3

Proposal for a directive
Article 1 – paragraph 1 – point 4 a (new)
Directive 2011/65/EU
Article 24 – paragraph 2

Present text	*Amendment*
	(4a) in Article 24, paragraph 2 is replaced by the following:
2. No later than 22 July 2021 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.	***'***2. No later than 22 July 2021 the Commission shall carry out a general review of this Directive, and shall present a report to the European Parliament and the Council accompanied by a legislative proposal.***'***

Or. en

Amendment 4

Proposal for a directive
Article 1 – paragraph 1 – point 4 b (new)
Directive 2011/65/EU
Article 24 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	(4b) in Article 24(2), the following subparagraph is added:
	'The legislative proposal shall include provisions laying down a methodology for all steps leading to the amendment of Annexes II, III and IV.'

Or. en

Amendment 5

Proposal for a directive
Article 1 – paragraph 1 – point 4 c (new)
Directive 2011/65/EU
Article 24 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission	*Amendment*
	(4c) in Article 24(2), the following subparagraph is added:
	'That methodology shall include an

opinion of the European Chemicals Agency (ECHA).'

Or. en

EXPLANATORY STATEMENT

Context

EU legislation to restrict the use of certain hazardous substances in electrical and electronic equipment (EEE) has been in force since August 2004. The 'RoHS legislation' contributes to reducing the risks to health and the environment relating to those substances. The current Directive, Directive 2011/65/EU on the restriction of the use of certain hazardous substances in EEE (or RoHS 2) entered into force in July 2011. It is a recast of an earlier Directive (Directive 2002/95/EC, or RoHS 1).

The Commission's proposal amends the scope of RoHS 2. This scope review is explicitly required in the Directive (Article 24(1)). It aims to tackle 'unintended side-effects' of the Directive that would arise after 22 July 2019. The proposal comes late, as the deadline stipulated in RoHS 2 is 22 July 2014.

The Rapporteur welcomes the Commission's legislative proposal as a necessary step to solve pressing issues linked to the current wording of RoHS 2, therefore increasing legal certainty while preserving the environment and public health. The scope review of RoHS 2 will particularly help to preserve jobs in SMEs, support the public health sector relying on refurbished medical equipment, and foster a circular economy.

The Rapporteur would like to stress that the objective of this scope review is not to address the whole functioning of RoHS 2. The Rapporteur believes that possible deeper changes to the RoHS 2 Directive should not be the purpose of this procedure, but rather of the upcoming general review of the Directive, to be carried out by the Commission by 22 July 2021, as laid down in Article 24(2). Nevertheless, this scope review represents an opportunity to point to some topics that would need to be addressed in the general review.

RoHS 2

In short, RoHS 2 lays down rules on the restriction of the use of certain hazardous substances in EEE (lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE)). As set out in Commission Delegated Directive (EU) 2015/863, the restriction of four phthalates will apply from 22 July 2019 (Bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP), diisobutyl phthalate (DIBP)). These substances should not be present above a prescribed amount. The list of restricted substances is reviewed periodically by the Commission on its own initiative or following the submission of a proposal by a Member State (Article 6).

Several product groups are explicitly excluded from the scope of the Directive (Article 2(4)), such as equipment designed to be sent into space. In addition, materials and components of EEE for specific applications may be exempted from the substance restriction for a limited period of time, by means of delegated acts. Exemptions should not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 (REACH) and any of the following conditions should be fulfilled: the reliability of substitutes is not ensured, or the elimination or substitution of the restricted substances is scientifically or technically impracticable, or the total negative environmental, health and consumer safety impacts caused by substitution are likely to outweigh the total environmental, health and consumer safety benefits thereof (Article 5).

The Rapporteur believes that the upcoming general review of RoHS 2 should be accompanied by a legislative proposal, which shall include a clear methodology for all steps leading to the amendment of Annexes II (list of restricted substances), and III and IV (exemptions). This methodology should include an opinion of the European Chemicals Agency, ECHA.

RoHS 2 has an expanded scope compared to RoHS 1: it covers medical devices and monitoring and control instruments, and is characterised by the so-called 'open scope' linked to the setting up of a new category 11 ('Other EEE not covered by any of the other categories') in Annex I, listing the categories of EEE covered by RoHS 2. Furthermore, the definition of EEE is broader than in RoHS 1: EEE is any piece of equipment that needs electric currents or electromagnetic fields for at least one intended function. In this context, the notion of 'new-in-scope EEE' refers to EEE that was outside the scope of RoHS 1 but that is now covered by RoHS 2.

The proposal

As mentioned above, the Commission proposal aims at tackling scope problems of RoHS 2, which would arise after 22 July 2019. This date corresponds to the end of the transitional period of eight years introduced by RoHS 2 during which new-in-scope EEE does not need to comply with the requirements of RoHS 2 and is still allowed to be made available on the EU market (Article 2(2)). The proposal particularly introduces provisions solving the following four problems:

- The current wording of RoHS 2 means that secondary market operations (e.g. reselling, second-hand market) for medical devices, monitoring and control instruments and other new-in-scope EEE (e.g. lawnmowers with electric ignition, electric bicycles) would be forbidden after 22 July 2019. This situation would be against the principles of a circular economy, particularly as it would reduce the lifetime of many products, especially when secondary markets for refurbished equipment exist. In addition, this situation would not be in line with the general harmonisation of EU product legislation.
- After 22 July 2019, it would not be possible to repair new-in-scope EEE other than medical devices and monitoring and control instruments with spare parts that are not compliant with RoHS 2. This situation would also shorten the lifetime of this category of EEE, which would need to be scrapped earlier.
- Due to the current wording of the definition of *Non-Road Mobile Machinery made available exclusively for professional use* (NRMM), two very similar types of NRMM would be treated differently after 22 July 2019: NRMM with an on-board power source (battery or engine) would be excluded from the scope of RoHS 2, whereas NRMM with an external power source (cord-connected) would fall within the scope of RoHS 2. Certain types of NRMM are produced on the same production lines, the only difference being the power source. This situation could lead to a phase out of cord-powered models, while the environmental benefits of these NRMM being in scope would be limited.
- Pipe organs placement on the EU market would be prohibited. Pipe organs are new-in-scope products, as they use electrical components (i.e. electric blowers), and their pipes are made of lead alloys, for which there are no substitutes. Due to the presence of electrical components, the whole organ, including the pipes, falls under the scope of

RoHS 2, which means that pipe organs would not be RoHS 2 compliant after 22 July 2019 and their sale would be prohibited.

The proposal also amends Article 5 on exemptions, setting a maximum validity period for exemptions applicable to category 11 EEE and deleting the deadline for the Commission's decision on the renewal of existing exemptions. In any case, exemptions remain valid until a decision on the renewal application is taken by the Commission, and at least 12 months afterwards in case it is revoked. In view of the growing number and complexity of exemptions under RoHS, and for the sake of better regulation and legal predictability, the Rapporteur introduces a requirement for the Commission to provide to the applicant, the Member States and the European Parliament a clear timeline for the adoption of its decision, within one month after receipt of an application for an exemption.