



Plenary sitting

A8-0205/2017

1.6.2017

*****I**
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.

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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,
 - after consulting the European Economic and Social Committee,
 - after consulting the Committee of the Regions,
 - 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 (A8-0205/2017),
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.

Amendment 1

Proposal for a directive **Recital 2**

Text proposed by the Commission

(2) Secondary market operations for electrical and electronic equipment (EEE), involving repair, replacement of spare parts, refurbishment and reuse, should be facilitated to promote a circular economy

Amendment

(2) Secondary market operations for electrical and electronic equipment (EEE), involving repair, replacement of spare parts, refurbishment and reuse, **and retrofitting**, should be facilitated to

in the Union. A high level of protection of human health and the environment should be ensured, including through the environmentally sound recovery and disposal of waste electrical and electronic equipment. Unnecessary administrative burden on market operators should be avoided. Directive 2011/65/EU allows EEE that fell outside the scope of the previous Directive 2002/95/EC of the European Parliament and of the Council⁶, but which would not comply with Directive 2011/65/EU, to continue to be made available on the market until 22 July 2019. After that date, however, both the first placing on the market and secondary market operations of non-compliant EEE are prohibited. Such prohibition of secondary market operations is inconsistent with the general principles underlying Union measures for the approximation of laws relating to products and should therefore be removed.

⁶ 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 (OJ L 37, 13.2.2003, p. 19).

promote a circular economy in the Union. A high level of protection of human health and the environment should be ensured, including through the environmentally sound recovery and disposal of waste electrical and electronic equipment. Unnecessary administrative burden on market operators should be avoided. Directive 2011/65/EU allows EEE that fell outside the scope of the previous Directive 2002/95/EC of the European Parliament and of the Council⁶, but which would not comply with Directive 2011/65/EU, to continue to be made available on the market until 22 July 2019. After that date, however, both the first placing on the market and secondary market operations of non-compliant EEE are prohibited. Such prohibition of secondary market operations is inconsistent with the general principles underlying Union measures for the approximation of laws relating to products and should therefore be removed.

⁶ 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 (OJ L 37, 13.2.2003, p. 19).

Justification

To support the wide idea of circular economy we should also use retrofit as a process for assessing the condition of existing equipment in order to decide, which components need to be replaced, which ones need to be repaired or modified and which ones can be reused, all based also on the future requirements of the equipment owner/user.

Amendment 2

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.'

Amendment 3

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;'

Amendment 4

Proposal for a directive

Article 1 – paragraph 1 – point 4 a (new)

Directive 2011/65/EU

Article 24 – paragraph 2

Present text

Amendment

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.

(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 by a legislative proposal.'

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).

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.

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.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Restriction of the use of certain hazardous substances in electrical and electronic equipment	
References	COM(2017)0038 – C8-0021/2017 – 2017/0013(COD)	
Date submitted to Parliament	25.1.2017	
Committee responsible Date announced in plenary	ENVI 1.2.2017	
Committees asked for opinions Date announced in plenary	ITRE 1.2.2017	JURI 1.2.2017
Not delivering opinions Date of decision	ITRE 28.2.2017	JURI 28.2.2017
Rapporteurs Date appointed	Adina-Ioana Vălean 31.1.2017	
Discussed in committee	4.5.2017	
Date adopted	30.5.2017	
Result of final vote	+	59
	-	1
	0	0
Members present for the final vote	Marco Affronte, Margrete Auken, Pilar Ayuso, Zoltán Balczó, Catherine Bearder, Ivo Belet, Simona Bonafè, Biljana Borzan, Paul Brannen, Nessa Childers, Birgit Collin-Langen, Mireille D’Ornano, Miriam Dalli, Seb Dance, Mark Demesmaeker, Stefan Eck, Bas Eickhout, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Gerben-Jan Gerbrandy, Arne Gericke, Jens Gieseke, Julie Girling, Françoise Grossetête, Jytte Guteland, Anneli Jäätteenmäki, Benedek Jávor, Josu Juaristi Abaunz, Karin Kadenbach, Kateřina Konečná, Urszula Krupa, Giovanni La Via, Jo Leinen, Norbert Lins, Valentinas Mazuronis, Susanne Melior, Miroslav Mikolášik, Massimo Paolucci, Gilles Pargneaux, Pavel Poc, Frédérique Ries, Annie Schreijer-Pierik, Davor Škrlec, Renate Sommer, Claudiu Cîprian Tănăsescu, Ivica Tolić, Nils Torvalds, Adina-Ioana Vălean, Jadwiga Wiśniewska, Damiano Zoffoli	
Substitutes present for the final vote	Jørn Dohrmann, Eleonora Evi, Robert Jarosław Iwaszkiewicz, Merja Kyllönen, Stefano Maullu, Christel Schaldemose	
Substitutes under Rule 200(2) present for the final vote	Pál Csáky, Siôn Simon	
Date tabled	1.6.2017	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

59	+
ALDE	Catherine Bearder, Gerben-Jan Gerbrandy, Anneli Jäätteenmäki, Valentinas Mazuronis, Frédérique Ries, Nils Torvalds
ECR	Mark Demesmaeker, Jørn Dohrmann, Arne Gericke, Julie Girling, Urszula Krupa, Jadwiga Wiśniewska
EFDD	Eleonora Evi, Robert Jarosław Iwaszkiewicz
GUE/NGL	Stefan Eck, Josu Juaristi Abaunz, Kateřina Konečná, Merja Kyllönen
NI	Zoltán Balczó
PPE	Pilar Ayuso, Ivo Belet, Birgit Collin-Langen, Pál Csáky, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Jens Gieseke, Françoise Grossetête, Giovanni La Via, Norbert Lins, Stefano Maullu, Miroslav Mikolášik, Annie Schreijer-Pierik, Renate Sommer, Ivica Tolić, Adina-Ioana Vălean
S&D	Simona Bonafè, Biljana Borzan, Paul Brannen, Nessa Childers, Miriam Dalli, Seb Dance, Jytte Guteland, Karin Kadenbach, Jo Leinen, Susanne Melior, Massimo Paolucci, Gilles Pargneaux, Pavel Poc, Christel Schaldemose, Siôn Simon, Claudiu Ciprian Tănăsescu, Damiano Zoffoli
VERTS/ALE	Marco Affronte, Margrete Auken, Bas Eickhout, Benedek Jávor, Davor Škrlec

1	-
ENF	Mireille D'Ornano

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention