Japan Business Council in Europe

Issued on the 10th March 2014

JBCE RESPONSE TO THE QUESTIONNAIRE FOR 2ND AREA OF REVIEW: EEE NEWLY IN SCOPE

The **Japan Business Council in Europe (JBCE)**, representing companies of Japanese parentage active in Europe, welcomes the opportunity to comment on the impact of the RoHS 2 Directive implementation for products newly in scope.

The JBCE regards following products and product groups to be newly in scope of the RoHS 2 Directive:

- Medical devices (cat. 8 products)
- Monitoring and control instruments, including industrial (cat. 9 products)
- Open scope products (cat. 11 products)
- Products affected by the new definitions (dependent/cables)
    - e.g. products having an internal combustion engine as main power source
- Equipment newly in scope in some Member States
    - e.g. car A/V equipment

Due to the broad and diverse nature of the products and product groups coming newly in scope it is difficult to provide a detailed overview on the presence, quantity and application of the regulated RoHS substances.

The JBCE is however committed to phase out the current and future RoHS regulated substances, either by substitution or by elimination, for products newly in scope by 22 July 2019, except for those applications where the conditions of Article 5.1(a) are fulfilled.

Implementation of the current provisions under Article 2.2, 4.3 and 4.4

- Will **increase costs** for economic operators
- Will have a **negative impact** on the environment
- Will have a **negative impact** on employment
- Will have a **negative impact** on competition
- Will have a **negative impact** on the supply of products or components

Furthermore the JBCE would like to point out that the provisions of Article 2.2 apply to the Directive as a whole I.e. all provisions and requirements. Therefore subsequent changes to the Directive, like the introduction of new substance restrictions by means of delegated act, might further add to the negative impact.

The JBCE supports the combination of both Scenario 3 and Scenario 5, as such amendments are the only options considered within this study to address the “hard stop” issue for all products newly in scope while safeguarding the “repair as produced” principle as well.

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ANNEX I - Impact

Implementation of the current provisions under Article 2.2, 4.3 and 4.4

- will increase costs for economic operators due to
    - the withdrawal of non-compliant products from the distribution and sales channels
    - the cessation of existing remanufacturing / refurbishments business models as well as secondary market operations
    - the modifications and actions needed to fulfill all administrative requirements

- will have a negative impact on the environment as
    - products in the market can no longer be repaired, remanufactured and/or refurbished leading to products being prematurely discarded

- will have a negative impact on employment as
    - it undermines existing business models which may otherwise not be economically viable

- will have a negative impact on competition as
    - legal uncertainty and non-harmonised interpretations will lead to an unlevel playing field

- will have a negative impact on the supply of products or components as
    - economic operators will refrain from making products and components available to avoid the potential impact caused by the “hard stop”

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ANNEX II - Scenarios

The JBCE has considered the suggested scenarios and would like to make following comments

Scenario 1 – RoHS 2 legal text to remain unchanged

Scenario 1 maintains the current situation and does not address nor solve any of the identified issues.

Scenario 2 – Amendment of Article 2.2 to exclude Category 8 and 9

Scenario 2 corresponds to "Option 2: Amend Article 2.2 to exclude categories 8 and 9" as explored by BIO IS in their study on "Measures to be implemented and additional impact assessment with regard to scope changes, pursuant to the new RoHS Directive".[1]

While this scenario resolves the identified issues for Category 8 and 9 products, it fails to do so for all other affected products and product groups which would still be denied the "repair as produced" principle and suffer from the "hard stop" requirement.

Scenario 3 – Incorporation of Article 2.2 into Article 4.3 with 22/07/2019 as compliance date

If appropriately worded, the new clause under Article 4.3 could resolve the "hard stop" issue and would ensure legal certainty by maintaining the original timeline.

In this respect we would like to refer to the wording in "Option 1: Delete Article 2.2 and amend Article 4.3" of the referenced BIO IS study on RoHS II Articles 2(2)/4(3) and 4(4)[2]

> "Paragraph 1 shall apply to medical devices and monitoring and control instruments which are placed on the market from 22 July 2014, to in vitro diagnostic medical devices which are placed on the market from 22 July 2016,
> to industrial monitoring and control instruments which are placed on the market from 22 July 2017 and to any other equipment that was outside the scope of Directive 2002/95/EC which is placed on the market from 22 July 2019."

At the same time however it would be necessary to have the "repair as produced" principle integrated by amending Article 4.4 accordingly.

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[1] See "1.2.4 Possible solution(s)", p.9-10 - http://rohs.biois.com/product-group-factsheets/BIO_RoHS_II_IA_Art%202%282%29%2C%204%283%29%20and%204%284%29_final%20II_clean.pdf?attredirects=0

[2] See also "1.2.4 Possible solution(s)", p.9-10 - http://rohs.biois.com/product-group-factsheets/BIO_RoHS_II_IA_Art%202%282%29%2C%204%283%29%20and%204%284%29_final%20II_clean.pdf?attredirects=0

Therefore Scenario 3 should be considered together with Scenario 5.

Scenario 4 – Incorporation of Article 2.2 into Article 4.3 with an earlier compliance date

In principle scenario 4 could provide a solution similar to Scenario 3, but an earlier compliance date might undermine the principle of better regulation as the supply chain requires legal certainty and sufficient time to implement a roadmap towards compliance.

Additionally, the variety of affected products might lead to a difficult and complex decision process to come to an earlier compliance date.

Scenario 5 – The addition of a spare part provision for non-conform products newly coming into scope and POM before July 2019

Scenario 5 aligns with the possible solution considered by BIO IS in their study on RoHS II Articles 2(2)/4(3 and 4(4)[3]

> "It would therefore be recommended to change Article 4(4) to introduce the 'repair as produced' principle also for those products currently excluded. The easiest option to do so would be to introduce a point (g) to include any other EEE outside the scope of Directive 2002/95/EC which is placed on the market before 22 July 2019."

Although Scenario 5 would tackle the "repair as produced" issue, there would still be a negative impact caused by the "hard stop" requirement of Article 2.2.

Therefore Scenario 5 should be considered together with Scenario 3.

[3] See "1.3.4 Possible solution", p.14 - http://rohs.biois.com/product-group-factsheets/BIO_RoHS_II_IA_Art%202%282%29%2C%204%283%29%20and%204%284%29_final%20II_clean.pdf?attredirects=0