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Kemikalieinspektionen
Swedish Chemicals Agency

MESSAGE/INFORMATION

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SE CA comments on the Stakeholder consultation on nine exemption requests from the substance restrictions in electrical and electronic equipment (RoHS Directive) March 2021

General comments on the exemption requests for 6a, 6a-I, 6b, 6b-I, 6b-II, 6c

According to entry 63 in Annex XVII, the REACH Regulation, lead shall not, with certain derogations, be placed on the market or used in articles supplied to the general public, if the concentration of lead (expressed as metal) in those articles or accessible parts thereof is equal to or greater than 0,05 % by weight, and those articles or accessible parts thereof may, during normal or reasonably foreseeable conditions of use, be placed in the mouth by children.

The restriction exempts EEE in scope of the RoHS Directive based on the assumption that the lead content in those products is already regulated in RoHS (see e.g. recital 10 in Commission regulation (EU) 2015/628). Therefore, in order not to weaken the restriction in REACH, exemptions in RoHS shall not be granted for products in scope of the REACH restriction.

The exemptions in RoHS must be adapted to the corresponding level of protection to human health according to other regulations. The broad exemptions for lead in RoHS undermine the purpose of the REACH restriction. The protection for human health in RoHS must be at least equivalent to the one in REACH. For example, external parts in EEE for use by the general public with a risk of skin contact do not lead to a safe use when an exemption of lead is applied.

Article 5 in the RoHS directive (2011/65/EC) stipulates that exemptions can be included in Annexes III and IV for materials and components of EEE for specific applications. Our interpretation is that both the material or component and the specific applications need to be defined in the description of an exemption. Otherwise, the need for an exemption cannot be assessed. This is not the case in these applications.

Since there is no specification of applications in the requested exemptions, we understand that the exemptions could potentially apply to all parts of the EEE made of steel, aluminum or copper. What would the total volume of all those metal parts be? What would the total amount of lead be in those volumes of metal?

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Furthermore, we note that EEEs covered by any of the exemptions need to be reported to the SCIP database at ECHA.

General comments on the exemption requests for 6a, 6a-I (*for lead as an alloying element in aluminium containing up to 0,4 % lead by weight, provided it stems from lead-bearing aluminium scrap recycling),* 6b, 6b-I (*for lead as an alloying element in batch hot dip galvanised steel components containing up to 0,2 % lead by weight)*

There is a conflict of interests here, which is neither compatible with the EU's chemicals strategy, nor with the EU's circular economy action plan. On the one hand, recycling of metals containing lead means a large energy saving compared to the production of virgin metal, especially when it comes to aluminum. On the other hand, hazardous substances are placed on the market in the form of lead in more products in smaller amount as long as recycling of the metal containing lead continues. One way to get around this in the long run could be to recycle metals containing lead in one loop while metals without lead is recycled in another loop so as not to contaminate all recycled metals. Furthermore, these different metals should be used in different applications in a well-controlled manner. We look forward to the result of the RoHS review concerning the waving of a non-toxic environment with energy-saving objectives in a decision on exemptions under Article 5 (1) (a), third indent.

Additionally, in these particular exemption requests, the total impact must be compared with the total benefit. To achieve that all information needed for the assessment must be available. If we do not know in what parts the material is used, it is not possible to evaluate whether the use e.g. is safe for the consumer. If all aspects are to be included in the evaluation, it is not enough to just evaluate the environmental effect of an energy saving that takes place in a completely different process. (The material is manufactured in an external process, separate from the manufacturing of EEE and separate from the use of EEE). As a result, when the specific applications for the exemption requests 6a, 6a-I, 6b and 6b-I are not specified it is not possible to assess if 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.

As a conclusion, the exemptions need to be narrowed down to a scope that can be evaluated according to at least one of the three criteria in RoHS article 5(1) a. Decisions on exemptions cannot be based on a guess on uncertain information.

Specific comments on the exemption requests for 6b, 6b-I

According to the application for a renewal of the exemption for lead in recycled aluminum scrap from European Aluminum, the allowed limit for lead in recycled aluminum has been lowered from 0.4% lead to 0.3% lead in the EN Standard 1706 for Aluminum and aluminum alloys. Therefore, we do not see any reason to keep the allowed limit for lead at 0.4%. The EU legislation should lead the development of

new solutions in order to achieve a better protection for human health and the environment. We should not take into account the level of lead in aluminum scrap recycled outside the EU.

Specific comments on the exemption request for 7a

With the current wording of this exemption it is almost impossible to perform enforcement activities, since it is unclear when it is justified to take advantage of the exemption. A way to improve the situation could be to require that such exemptions are justified in the technical documentation in order to be applied. We would therefore propose to investigate whether it is possible, for example, to add requirements for such a justification in standards or in module A in Annex II in 768/2008 / EC.