

Joint industry position on the outcome of the Lot 5 revision process

Brussels, 13 March 2019

Following the Regulatory Committee approval of the requirements of the draft Commission Regulation on Ecodesign Requirements for electronic displays (Lot 5), the Regulation was officially submitted to the European Parliament and the Council for scrutiny. This communication outlines industry's assessment of the Regulation and is addressed to the European Parliament and Member States' representatives as well as the European Commission.

INTRODUCTION

After approximately 7 years of work on the Lot 5 text, the meeting of the Regulatory Committee on 19 December 2018 introduced and approved substantial changes to the requirements of the draft Commission Regulation. Some of the changes were in response to industry comments and recommendations, which improved the workability of the regulation. This included a) removal of the extreme requirements previously proposed for an additional Tier set for 2025; b) introduction of the "professional repairer" concept, thereby limiting access to information for unqualified third parties, which could have significantly endangered consumer safety and decreased the durability of products, contributing to the generation of more electronic waste; c) allowing repair information to be provided to professional repairers two years after placing a new product on the market, thus protecting the manufacturer's intellectual property and encouraging that manufacturers' extended repair network conduct repairs free of charge during the minimum mandatory two year guarantee period; d) avoidance of the burdensome, unreasonable and excessive tracking of substances at a precision of fractions of milligram, especially considering that recyclers will not make use of such information during their recycling activities.

While industry supports the intent of the proposed measure for electronic displays, there are several critical issues in the final requirements as adapted and approved by the Regulatory Committee which will seriously impact the ability of display manufacturers to conduct business in the EU market. **With this paper, industry wants to raise concerns about these critical elements, share recommendations on how some of them can be addressed, and call on the European institutions to find a way to amend the text of the regulations to remediate the errors that require urgent correction.**

CRITICAL ISSUES:

1. Unclear Implications of the Scope Definition in Article 1

The sudden modification of the scope is creating major legal uncertainty due to the vagueness of Article 1, and may result in the inclusion of numerous types of integrated displays. Many displays potentially falling under the scope cannot be tested with a standard dynamic test loop, or evaluated individually from the containing product, and yet they may have to carry an energy label.

The modification of the text in Article 1 could also result in serious safety implications - displays for industrial use are designed to withstand harsh environments which include high levels of vibration, temperature, humidity, outdoor use, industrial levels of EMC immunity, etc. No assessment of such

industrial displays has occurred and the derogations given in Article 1(2), 1(3) and 1(4) will not cover all such products. In the worst case, it may prove impossible for some industrial displays to meet the new requirements whilst maintaining their high levels of reliability; in the best case, it will take up to 7 years for manufacturers to adapt a specialist industrial product to meet these requirements (R&D program; product development and laboratory testing; 3rd party certification; manufacturing and flushing of parts through the supply chain). The inclusion of such industrial displays in the scope would therefore clearly have unintended consequences, including potential negative safety implications for users of critical plants, such as manufacturing plants, oil refineries or nuclear power stations.

This departure from the text of the proposal notified to the WTO on 9 October 2018 has significant implications on the compliance assurance processes conducted by manufacturers. If not immediately addressed, it can result in an inability to place on the market a large range of products for which it is impossible or inappropriate to evaluate performance in accordance with the Lot 5 methodology.

Industry proposal:

To urgently outline clarifications on the scope of the regulation in the form of Official Guidelines. However, such documents are not considered legally binding even after the official approval of the Commission and the Member States representatives, and local or regional courts can still rule against them. It is therefore imperative that a process to amend Article 1 of the regulation is started immediately to appropriately clarify the scope and exclude any product that does not provide a video signal input interface or display drive allowing the correct display of a standardized dynamic video test sequence for power measurement purposes.

2. Excessively Strict Energy Efficiency Limits

While we appreciate the openness of the Commission and most of the Member States to receive our technical input, unfortunately our feedback was often disregarded in the final decision making. To this day, the EU regulators do not recognize that it is inappropriate to set up minimum energy performance targets based on what has been misleadingly suggested to be the “annual display technology improvement rate”, an invalid approach that unfortunately allowed the impact of the proposal to be mistakenly perceived as less severe than it actually is.

In some cases, even the findings from independent studies prepared for the European Commission have been disregarded. For example, the study by VHK, Viegand Maagøe, Intertek and Robert Harrison Associates Ltd confirms the high backlight transmission losses due to the comparatively low transmittance LCD matrix structure of curved displays and to the greater light loss in wider backlight reflector and diffuser panels. Further, the study confirms the on-mode specific power demand of wide aspect ratio and curved display monitors is higher than equivalent flat 16:9 aspect ratio displays. Consequently, correction factors should have been considered and should have been included in the final regulation in order to avoid negatively impacting the availability of high performance products in the EU market.

The final result of this one-size-fits-all approach is a regulation that does not account for the use of energy in different types of display implementations, but instead sets an arbitrary threshold that will limit European consumer access to new technologies, improved image quality and extended functionality. In addition, when Tier 2 limits are introduced in 2023, displays with 8K resolutions will face serious market access restrictions, since the voted regulation does not provide any differentiation between 8K technology and lower resolution products.

Industry proposal:

For the purpose of the upcoming Lot 5 review, which must start as early as possible considering the serious negative impact on innovation expected from the second Tier of requirements, the complexity of the display market is evaluated using a science-based approach, where the functionality of the product is factored in the total efficiency.

3. Restriction on the Use of Halogenated Flame Retardants

Industry supports the use of the appropriate legal instruments in order to restrict substances in products or specifically in electrical and electronic equipment. We consider the introduction of a ban of all halogenated flame retardants (HFRs) in this eco-design Regulation to be fundamentally flawed as it sets a concerning precedent of restricting substances without due process and impact assessment. This restriction disregards the principle of regulatory coherence, Better Regulation and it prejudices the outcome of the ongoing policy work on the Interface between Chemicals, Products and Waste.

In terms of regulatory coherence, the REACH Regulation horizontally and the RoHS Directive vertically at the level of EEE, are the appropriate legal instruments to consider the scientific evidence of the negative impacts of chemical substances in products. The RoHS Directive mandates periodical substance restriction reviews that will take into account, amongst others, the negative impact during EEE waste management operations, including the possibilities for recycling of materials from waste EEE. As for REACH, it has both the Authorisation and Restriction available to restrict substances. Both regulatory instruments allow for an EEE wide restriction as opposed to dealing with a one single product category. The eco-design regulation for light sources and separate control gears, explicitly mentions that RoHS governs the use of hazardous substances and that no eco-design requirement on the substance in question should be set in the eco-design implementing measure.

In terms of process, restricting substances under the REACH Regulation and the RoHS Directive rightly apply a methodology to assess the scientific evidence, the impact and the alternatives. Such an assessment was not carried out during the development of this Regulation. The European Commission's DG Environment is currently finalising the study on the update of the existing methodology to identify and assess substances for possible restriction under the RoHS Directive.

In addition, as opposed to substances bans under the REACH Regulation and the RoHS Directive, this Regulation lacks the definitions and threshold limits necessary for legal certainty, nor does it allow for an exemption process.

Finally, the EU is assessing how to develop future chemicals, waste and eco-design policy in order to facilitate the Circular Economy. The Interface between Chemicals, Products and Waste study will be finalized this year in order to formulate policy options. Standardization efforts for Eco-design are ongoing. This type of decision prejudices the outcome of the ongoing policy work which should to aim at a coherent and predictable regulatory framework for the Circular Economy.

Industry proposal:

To amend the Regulation to remove the ban on HFRs, and address the environmental impact of these substances during the RoHS review.

4. Insufficient allowance for ABC functionality

The ABC allowance has been arbitrarily reduced to 10%, even though the energy savings that can be achieved through the implementation of this feature are over 20%. This unexpected change undermines years of work put into the development of a suitable ABC response characteristic and of an improved

testing methodology by the Commission Consultant, testing labs, display manufacturers and NGOs. The 10% allowance will not sufficiently compensate manufacturers for the additional efforts they need to put in for a smooth implementation of ABC and represents a wasted opportunity to popularize such smart energy saving features.

Industry proposal:

To amend the Regulation to increase the allowance for ABC functionality to 15%, as proposed in the draft regulatory text notified to the WTO.

5. Mandatory “Cadmium inside” and “Cadmium free” Logos

We believe that a mandatory logo related to Cadmium content should be required only when the display contains more than 0.01% w/w of Cadmium, since this substance has already been restricted under the RoHS Directive.

Directive 2011/65/EU (RoHS Directive) has restricted Cadmium since 2006, except for applications listed in its Annex III (exemptions). The “Cadmium inside” logo would be applicable to the displays using the exemption 39(a) of Annex III under RoHS Directive. This exemption only covers specified-new technology, and the majority of the display models are already cadmium-free.

If all displays must be labelled with the “Cadmium-free” logo, all industry’s efforts to eliminate Cadmium use would lead to no incentive or favourable treatment under the Eco-Design Directive, because the burden of marking a display with the “Cadmium-free” logo is identical to that of marking with the “Cadmium-inside” logo.

We strongly believe that the requirements should be reasonable and not overlap (or conflict) with the results and/or requirements of existing Directives.

Industry proposal:

To change back the labelling requirement through an amendment, to the version shared with the WTO to avoid an inadequate burden on both manufacturers to add the logo, and on recyclers to remove it.

6. Unexpected Requirements on Spare Part Availability and Delivery Time

We are very disappointed not to have been consulted by the Commission on the feasibility of introducing requirements related to the provision of spare parts. These requirements have been nevertheless introduced in the final regulation despite the lack of consultation at both EU and WTO level. We see the duration of 7 years as excessive, and the maximum spare part delivery time of 15 days as impractical given that the majority of display producers are not based in the EU, and air shipment is costly. Preliminary assessments of this unprecedented type of requirements indicate they will likely result in an increase of the repair price, which may not be accepted by consumers. The severity of the impact is not yet fully known, and will depend heavily on the interpretation provided by the Commission on the range of display products that are subject to these requirements.

Industry proposal

To consult the industry and properly assess the impacts of these new types of requirements during the 2022 review of this Regulation.

7. Increased Consumer Confusion Related to the Energy Class Range

We are dissatisfied that the voted regulation did not proceed to amend Regulation 1062/2010 to prevent the mandatory entry into force of A+++ to D labels in January 2020. The revised energy labelling regulation requires the new A to G label to be provided starting November 2020, and an additional label change only 10 months in advance of this re-scaling will result in increased burden and costs to manufacturers, without any added benefit, and will contribute to consumer confusion. We request the Commission to take an action to prevent the change of the display energy labels twice in the course of 2020 either through an amendment of the currently applicable regulation, or through an ADCO decision.

Industry proposal:

To amend Regulation 1062/2010 to cancel the entry into force of the A+++ to D energy labels.

CONCLUSION

The adoption of secondary measures in the area of eco-design such as Lot 5 has shown serious shortcomings. While there have been substantial efforts on the part of the European Commission to communicate with stakeholders, there are several critical modifications introduced and approved by the Regulatory Committee which have never gone through any consultation. The process is largely opaque to the industry and there have been limited opportunities for us to engage in serious and detailed technical discussions on the substantial amount of relevant data, analysis and proposed language. This has created a very ineffective and undesirable situation where crucial modifications on the draft have been introduced at short notice without proper impact assessment, further stakeholder consultation or opportunities to make amendments.

Industry is supportive of the Ecodesign and Energy Labelling frameworks and our companies always aim to ensure that their products are designed, produced, used, and reused or recycled in a sustainable and safe manner whilst providing increased benefits to our customers and society at large. By closely collaborating with policymakers and other stakeholders, we remain committed to contributing with our technical expertise. However, we remain very concerned that ad-hoc decisions without consultation may become the norm in the future. We therefore call on the Commission to improve the transparency of their processes, and urgently release to the public the Impact Assessment conducted on the Lot 5 measures and the minutes of the Regulatory Committee meeting that took place on 19 December 2018.

In view of the critical issues highlighted above, industry calls on the European institutions to reconsider our data and input and commit to introduce, through an amendment of the Regulation, the relevant changes necessary to address our concerns.

In view of the anticipated review of the adopted regulations, which is due by 2022, we further encourage the European Commission to engage in an open and transparent dialogue including technical exchanges with stakeholders. Such an engagement will foster innovation and enable the Commission to achieve energy savings goals that are realistic.



INDUSTRY ASSOCIATIONS

AmCham

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totaled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

CIAJ (Communications and Information Network Association of Japan)

The Communications and Information Network Association of Japan was established in 1948 as a voluntary industry association composed mainly of telecom terminal manufacturers and network infrastructure vendors. In October 2009, CIAJ embarked on a new page in its history by becoming a general incorporated association.

The core Regular Members are manufacturers of telecom equipment, including network devices and mobile handsets, while other industry players, such as telecom operators and solution vendors participate as Forum Members. As part of upholding CIAJ's basic principle of creating new business opportunities and contributing to the robust growth of the industry, we will strengthen our efforts to promote policies and raising awareness of industry positions, attain tangible achievements from committee activities, and enhance our efforts to disseminate information to a wide audience.

<http://www.ciaj.or.jp/en/>

Consumer Technology Association™ (CTA)

Consumer Technology Association (CTA)™ is the trade association representing the USD 398 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. More than 2,200 companies - 80 percent are small businesses and startups; others are among the world's best known brands - enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES® - the world's gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA's industry services.

DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total over 35,000 ICT Companies in Europe represented by 63 Corporate Members and 40 National Trade Associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

JBCE (Japan Business Council in Europe)

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organisation representing the interests of over 80 multinational companies of Japanese parentage active in Europe.



Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, railway, textiles and glass products.

<http://www.jbce.org>

JBMI (Japan Business Machine and Information System Industries Association)

Japan Business Machine and Information System Industries Association (JBMI) is the industry organization which aims to contribute the development of the Japanese economy and the improvement of the office environment through the comprehensive development of the Japanese business machine and information system industries and rationalization thereof.

<http://www.jbmia.or.jp/english/index.php>

JEITA (Japan Electronics & Information Technology Industries Association)

The objective of the Japan Electronics and Information Technology Industries Association (JEITA) is to promote the healthy manufacturing, international trade and consumption of electronics products and components in order to contribute to the overall development of the electronics and information technology (IT) industries, and thereby further Japan's economic development and cultural prosperity.

<http://www.jeita.or.jp/english/>

JEMA (The Japan Electrical Manufacturers' Association)

The Japan Electrical Manufacturers' Association (JEMA) consists of major Japanese companies in the electrical industry including: power & industrial systems, home appliances and related industries. JEMA will contribute to sustainable global development through improvement and enhancement of social and living infrastructures by strengthening international competitiveness of Japanese electrical machinery equipment industry.

<http://www.jema-net.or.jp/English/>

I&P: Imaging and Printing Association

I&P Europe is a European association of product manufacturers and technology providers for the imaging and printing industry. I&P Europe members' products include conventional and digital materials and their processing solutions. This includes for example inks for digital printing applications, toners, pressroom chemicals, printing plates and equipment. The association currently has 33 member companies (45% SMEs). The sum of total annual turnover within the EU of all companies represented in I&P Europe is round about 7 Billion Euro.

www.ip-europe.com

Information Technology Industry Council, ITI

ITI is the global voice of the tech sector. We advocate for public policies that advance innovation, open markets, and enable the transformational economic, societal, and commercial opportunities that our companies are creating. Our members represent the entire spectrum of technology: from internet companies, to hardware and networking equipment manufacturers, to software developers. ITI's diverse membership and expert staff provide a broad perspective and intelligent insight in confronting the implications and opportunities of policy activities around the world. Visit <http://www.itic.org/> to learn more. Follow us on Twitter for the latest ITI news @ITI_TechTweets.

KEA (Korea Electronics Association)



KEA is a representative organization of Korea's electronics industry and dedicating to advancing IT & electronics industry. We were established in 1976, and have more than 800 members including global electronics companies such as Samsung Electronics, LG Electronics, etc. We are striving to promote industry development and to build infrastructure of Electronics & IT industry by reflecting the companies' needs and interests.

<http://www.gokea.org>