

## Our position

# Gaps and overlaps between RoHS and REACH: Going beyond the common understanding paper

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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 totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Introduction

When the European Commission released its 'REACH and Directive 2011/65/EU (RoHS) a Common Understanding' document in July 2014<sup>1</sup>, it publicly acknowledged that there could be overlaps and inconsistencies between these laws, which both have the ability to ban chemical substances. Already then, some substances undergoing REACH authorisation were also prioritised for bans under RoHS.

We have since then experienced other forms of these possible overlaps. We have identified examples of the most harmful cases, along with those that create unnecessary duplication. We have also gained extensive experience with the REACH Risk Management Option Analysis (RMOA)<sup>2</sup>, have seen the nature of REACH restrictions<sup>3</sup> evolve, and have been through the process of applying for authorisation.<sup>4</sup>

We believe such experience is essential to upcoming legislative discussion on the RoHS directive as well as for upcoming REACH investigations; we would like to share these observations help inform the important discussions to come.

## The purpose of REACH and RoHS laws

The RoHS Directive's purpose is to manage the risks associated with the improper disposal of waste, and the risk associated with its treatment. It uses access to the EU Single Market and chemical bans as tools to meet the objectives of reducing risk to the environment and human health associated with waste electrical and electronic equipment (WEEE).

At its origin, it was clear that RoHS was a waste phase legislation, and it was instrumental in the now widespread realisation that waste concerns must often be addressed during the design phase.

REACH, on the other hand, is all-encompassing and covers all phases of the substance and product life-cycle up to the waste phase. It has more procedural tools, and data, at its disposal. However, it has limited scope when it comes to assessing the end of life chemical exposures and risks which RoHS aims to prevent.

## The need to go beyond the 2014 common understanding paper

The 2014 common understanding paper on REACH and RoHS was a step in the right direction in clarifying overlaps between both laws. However, the document is starting to look dated in some of the alternatives it proposes, and where the practice of these laws, and how they overlap, has set different precedents over the past 6 years.

AmCham EU believes that of all the alternatives presented in this paper, the best option remains, where possible, to align the synergies between RoHS and REACH restrictions. Specifically, when it is possible to give electronic and electrical equipment (EEE) products a derogation from REACH restrictions so they can instead be regulated via RoHS.

Reflections such as these should become an essential part of the REACH RMOA process going forward. They should also be integrated in the future methodology to add substances to RoHS. Unfortunately, despite the common understanding paper, there are currently a number of cases where the same substances are targeted under REACH processes, while also being assessed for inclusions on the RoHS Annex 2 before a given REACH procedure is even finalised.

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<sup>1</sup> REACH and Directive 2011/65/EU (RoHS) a Common Understanding (Ref. Ares(2014)2334574 - 14/07/2014)  
<http://ec.europa.eu/DocsRoom/documents/5804/attachments/1/translations>

<sup>2</sup> <http://www.amchameu.eu/position-papers/position-paper-improving-reach-2018-and-beyond-risk-management-option-analysis-rmoa>

<sup>3</sup> <http://www.amchameu.eu/position-papers/improving-reach-2018-and-beyond-restrictions>

<sup>4</sup> <http://www.amchameu.eu/position-papers/position-paper-improving-reach-2018-and-beyond-authorisation>

For example, the recent proposal that the candidate listing of the four phthalates (DEHP, BBP, DBP and DIBP) be updated to reflect their identification as endocrine disruptors for the environment is such an example of overlap. The discussion around this update did not include any reference to risk management measures these substances were subject to under RoHS.

## REACH and RoHS going forward

The RoHS directive has a successful record of impacting EEE product design and phasing out harmful substances. When a chemical presents a health risk during waste handling or recycling, or if there is exposure to the environment due to illegal or insufficient standards when WEEE is discarded, RoHS is the best regulatory tool to use and should be prioritised as the right risk management tool over REACH.

On the other hand, process chemicals, chemicals which may be released during use, are best addressed through the REACH regulation and its processes.

Going forward, we believe these facts and observations should guide both the REACH RMOA process and RoHS substance methodology to avoid confusion and the ineffective use of resources down the line. Using the wrong law for the wrong purpose will inevitably lead to duplication at a later stage.