AmCham EU's response to the Austrian Environmental Agency's consultation on the draft methodology manual for the identification and assessment of substances for a potential restriction under RoHS 2

CONSULTATION RESPONSE

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Background and Analysis

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the improvements made in the latest draft of the Austrian Environmental Agency's draft methodology manual for the identification and assessment of substances for a potential restriction under RoHS 2, such as the focus on substances used in electronics and electronic equipment (EEE) and the removal of references to company-specific voluntary restrictions.

We are, however, seriously concerned about some fundamental aspects of the methodology, such as the identification, prioritisation and assessment criteria. There is no coherence between the intention to restrict substances causing a risk during the end of life phase and the identification and prioritisation criteria based on hazard properties. Waste criteria should become the key criteria for identification and prioritisation. The scoring system should be adapted to give substantial weight to the end of life concerns. We strongly recommend that the frequency of the restriction proposals be clarified, and it be aligned with the four-year revision cycle of the RoHs Directive. It is also very important to clarify what the process would be and at what stage of the procedure stakeholders will be consulted.

We insist on the need to further explore the relations between REACH and RoHS to avoid inconsistency and overlaps. Regulatory decisions made in the context of REACH, and covering EEE, should be fully taken into consideration under RoHS to avoid a duplication of analysis and overlapping restrictions.

We urge the Austrian Environmental Agency and the Commission to work further on improving the RoHS methodology. Applying RoHS methodology on substances should only be done after the first step of the project is finalised and the RoHS methodology is accepted and supported by a large number of stakeholders, Member States and the Commission.

The relation between RoHS and REACH: Chapter 2, page 8

We question the conclusion made by the Austrian Environmental Agency that REACH 'generally regulates substances', while RoHS is a sector specific directive. REACH introduces very specific requirements that impact EEE in the same way RoHS does.
We strongly recommend that the Austrian Environmental Agency undertake a detailed analysis of the overlap between REACH and RoHS using the recent REACH review report by the Commission. Although there is no legal mandate 'to copy the procedure of substance restriction under REACH and involve ECHA and its scientific Committees', the RoHS Directive calls for coherence between the REACH and RoHS.

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To maximise the necessary synergies with REACH, we strongly suggest that the information generated under REACH on substances, their classification, uses, exposure and best risk management measures, are fully taken into consideration in the context of RoHS. We understand that the Commission is responsible for the assessment of substances. However, given the complexity of the analysis and the important consequences of substance restrictions, we strongly recommend that a scientific body assist the Commission in the assessment of candidate substances.

Priority substances: Chapter 2, page 8

Since the RoHS Recast, the substances identified as priority in the recital have been subject to REACH authorisation. A restriction proposal of the three phthalates covering uses in EEE has been analysed by ECHA and rejected. These regulatory decisions in the context of REACH should be fully taken into consideration in the context of RoHS.

The methodology for the identification and assessment of substances for potential restriction under RoHS suggests two different procedures. If the Commission makes the proposal, it should follow the methodology for identification of substances. If the proposal is made by a Member State, however, it will go straight to the second phase of pre-assessment. This approaWe request this approach be changed. Proposals by Member States should comply with the same methodology for substance identification that is required of the Commission to ensure an objective, equal and transparent approach to substance prioritisation.

With regard to part 1 (identification of substances), it was communicated during the second stakeholder meeting that over 200 substances were identified as potential candidates for RoHS restriction. We would like to stress that the RoHS substance scope should be reviewed periodically (every four years) and that only a number of proposals for restrictions should be considered at once, due to the impact on industry. In this context, a large working list is inappropriate; the list should be limited to the substances that are explicitly under consideration for identification and assessment. In our view it is extremely important to involve stakeholders, in transparent and constructive way, from the beginning of the process, giving them the possibility to provide input and comments on the substances identified for further assessment for potential restriction under RoHS.

Approach/information: Chapter 3, page 14

We welcome the targeted approach focusing on substances used in EEE, and consider this as an improvement compared to the previous draft. It should be specified that the list of studies used to establish the inventory of substances is non exhaustive. In order for this methodology to be transparent and objective, it is important to clarify what criteria will be used for selecting these studies. Waste criteria should play a key role in the identification and prioritisation phase, however, these are not at all considered at this stage of the methodology in the current draft.

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Update information available from databases: Chapter 3, page 15

We would like to stress that the substances listed in the IEC 62474 Database include substances that are already covered by legislation, and any further prioritisation under RoHS will bring little additional value and will complicate the regulatory environment.

Supplement the existing inventory with additional info: Chapter 3, page 16

We welcome the de-selection of private and voluntary restriction lists, however we disagree with the approach of taking into consideration comments made by NGOs during stakeholder consultations. NGO comments and lists, such as those made by companies in a sector specific context, do not represent authoritative opinions on substance issues and cannot be used as information sources to update the inventory.

Select substances present in EEE that are hazardous: Chapter 3, page 16

The title should be changed to read: '…Which are hazardous during the waste phase'. The waste phase criteria should be the basis for prioritising substances. This will make the methodology coherent with the objective stated on page 8: 'The restriction of a substance under RoHS has to be based on an assessment showing that the use of the substance in EEE may cause a risk or other negative impacts during end of life management of EEE'.

Table 1 - Criteria for the identification of candidates: Chapter 3, page 17

We have several concerns about the criteria chosen for identification of substances, as there is no demonstrated correlation between the selected criteria and the potential risk related to the waste phase. The fact that a substance is identified as a substance of very high concern (SVHC) does not mean that it is used in EEE, or that it poses a risk during the waste phase. We are also concerned about the polymer based (PB) classification. Although it has been suggested by the Dutch Institute for Public Health and the Environment (RIVM), this methodology has not been adopted at EU level and should not be considered as authoritative. We suggest the RoHS assessment be aligned with the official EU classification of persistent, bioaccumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB), and not to consider PB as a separate category.

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Substitution database: Chapter 3, page 17

As mentioned in our previous submission, the use of substitution databases is questionable. Substitutes are not necessarily suitable for all EEE applications especially in the context of an open RoHS scope.

Moreover, the substitutes should be assessed for their technical and economic availability, which is very much an application specific assessment. Most importantly, the prioritisation of substances under RoHS should be based on risk identification and not on the existence of substitutes.

Evaluation of legal restriction status: Chapter 4, page 21

Further analysis is needed regarding the REACH and RoHS restrictions. If a restriction proposed under REACH is broadly formulated and covers uses in EEE, the Risk Assessment and Socio-Economic Analysis Committees will make a detailed assessment of the risk, the substitutes and the socio-economic impacts. If ECHA concludes that there are no grounds for restriction in EEE, no further actions should be taken under REACH and no restrictions should be envisaged under RoHS. If ECHA concludes that a restriction, including in EEE, should be introduced, this may trigger a RoHS specific assessment taking into account waste criteria.

Prioritisation of substances: Chapter 4, page 21

Regarding the four attributes considered for prioritisation, we believe that the production volume of the substance is irrelevant. A major part of the production could be exported outside EU and/or used in applications which are not EEE. The concern related to the waste management should be given higher priority compared to the hazardous properties of the substance.

Scoring system: Chapter 4, page 23

The logic of the proposed scoring system needs to be clarified. We are very concerned that the focus remains on the hazardous properties of a substance and less on waste issues. The RoHS restrictions will provide limited added value if they are mainly based on hazard. The RoHS methodology should focus on the risks during the end of life phase of EEE. Although this is stated in the text of the draft methodology (page 8), the scoring system does not reflect this logic and approach. We strongly recommend that substantial weight be given to the waste phase criteria compared to the hazardous properties of a substance.

Nanomaterials: Chaper 4, page 25

Prioritising nanomaterials is contradictory with the Commission view laid out in the Second Regulatory Review on Nanomaterials, which concludes that nanomaterials should be addressed under REACH, using the regulation's tried and tested substance-by-substance risk management approach.

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Detailed assessment of selected substances – Chapter 5

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We would like to point out the current draft's inconsistent approach to the compilation of information. The titles refer to risk, while the subtitles refer to hazard: 'Compilation of information on risk for the environment' with the subtitle 'Compile information on hazard: hazard identification for the environment;. A coherent approach is needed based on hazard or risk identification.

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The approach related to the different waste streams and exposure assessments are unclear. For instance, the collection rate does not indicate risks.

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Existing legislation on, for example, workers' protection, IPPC and waste incineration should be fully taken into consideration when assessing human and environmental exposure during WEEE treatment

Relating to Part III - Step 5A

Within the alternatives assessment section, we recommend that part of the definition of a 'lower risk alternative' be a requirement that alternatives must lower the risk for the endpoint that caused the substance of concern to be evaluated in the first place. For example, if the substance under review is carcinogenic, any alternative must show a meaningful improvement in that trait, at a minimum.

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