

**DIRECTIVE 2011/65/EU OF THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**of 8 June 2011**

**on the restriction of the use of certain hazardous substances in electrical and electronic equipment**

**(recast)**

**NOTES ON THE RoHS DIRECTIVE 2011**

YOUR ATTENTION IS DRAWN TO THE FOLLOWING:

The notes on the following pages are intended as a simple outline guide to the new RoHS Directive primarily for manufacturers and others who may not have been involved with RoHS previously. They are not a substitute for detailed reading or understand of the Directive, nor are they intended to be a definitive statement of the law as it exists or as it will exist when the Directive is implemented. Interpretation of the law is and will remain a matter for the Courts.

The notes are not intended as an authoritative guide to the requirements or obligations, they are merely to indicate to manufacturers and others that legal obligations exist and should be considered and planned for. The notes do not cover every Article and Annex of the Directive; they look in brief only at those Articles and Annexes that impact directly on manufacturers, importers and distributors.

It is expected that the UK Government will, when implementing the Directive into UK legislation, issue Guidance Notes for manufacturers and others. However in view of the timescale for implementation, manufacturers, importers and distributors should be preparing and planning for meeting their obligations well before those Guidance Notes are issued.

## The RoHS Directive 2011, its effect and implications

### BACKGROUND

In 2002, the EC introduced two Directives concerned with the environmental impact of electrical and electronic equipment (EEE).

Directive 2002/95/EC dealt with the restriction of the use of certain hazardous substances (RoHS) in EEE whilst Directive 2002/96/EC covered the disposition of waste electrical and electronic equipment (WEEE).

The WEEE Directive covered 10 categories of EEE and all but 2 of these equipment categories were within the scope of the RoHS Directive.

The 10 categories of equipment were:

<u>Category</u>	<u>WEEE</u>	<u>RoHS</u>
1. Large household appliances	Yes	Yes
2. Small household appliances	Yes	Yes
3. IT and telecommunications equipment	Yes	Yes
4. Consumer equipment	Yes	Yes
5. Lighting equipment	Yes	Yes
6. Electrical and electronic tools (with the exception of large scale stationary industrial tools)	Yes	Yes
7. Toys, leisure and sports equipment	Yes	Yes
8. Medical devices (with the exception of all implanted and infected products)	Yes	No
9. Monitoring and control instruments	Yes	No
10. Automatic dispensers	Yes	Yes

The substances, which were subject to restricted use under the RoHS Directive, were:

Lead

Mercury

Cadmium

Hexavalent chromium

Polybrominated biphenyls (PBB)

Polybrominated diphenyl ethers (PBDE)

Recognising that it would be almost impossible to eliminate these substances entirely, provision was made for minute amounts to be present and these amounts were subject to regular review with the intention of total elimination when possible. The RoHS Directive has been amended over the years to account for advances in technology leading to feasible reductions in the amount of the substances that could be used. However in July 2011 the EC adopted a new RoHS Directive (2011/65/EU), which has an increased scope and revised limits for the use of the restricted substances in homogeneous substances.

The new RoHS Directive, which must be introduced and in effect in the national legislation of all Member States by 2 January 2013, will cover the following categories of EEE;

**Category (Annex 1 to the Directive)**

1. Large household appliances
2. Small household appliances
3. IT and telecommunications equipment
4. Consumer equipment
5. Lighting equipment
6. Electrical and electronic tools
7. Toys, leisure and sports equipment
8. Medical devices
9. Monitoring and control instruments including industrial monitoring and control instruments
10. Automatic dispensers
11. Other EEE not covered by any of the categories above

**The important thing to note here is the addition of category 11, a “catch all” category that picks up virtually every type of EEE.**

The restricted substances list now reads as follows: (Annex II to the Directive)

**“Restricted substances referred to in Article 4(1) and maximum concentration values tolerated by weight in homogeneous materials”**

Lead (0.1%)

Mercury (0.1%)

Cadmium (0.1%)

Hexavalent chromium (0.1%)

Polybrominated biphenyls (PBB) (0.1%)

Polybrominated diphenyl ethers (PBDE) (0.1%)

The Directive must be implemented into national law by 3 January 2013. From that date, any new models of EEE made available on the EU market must comply with the requirements regarding maximum amounts of the restricted substances. Models of EEE which were exempted from the original Directive (e.g. petrol dispensers) and which were made available on the EU market before 3 January 2013 can continue to be made available even though they do not comply, until various dates in the future depending upon which category they fall in.

At the moment, NMO, the UK enforcement agency for RoHS is taking the view that both automatic and non-automatic weighing instruments that are used for trade come under the category of monitoring and control instruments and if this view is correct then existing models can continue to be placed on the market until 22 July 2014. After that date, new units must meet the requirements.

There is, however, a strong argument for saying that both automatic and non-automatic weighing instruments which are used for commercial transactions will fall within the separate category of industrial monitoring and control instruments, which would mean the date by which existing models must comply would be 22 July 2017. Any models, which are not made available in the market until on or after 3 January 2013, must meet the requirements from their introduction.

The Directive requires in Article 4.1 that:

“Member States shall ensure that EEE placed on the market, including cables and spare parts for its repair, its reuse, updating of its functionalities or upgrading of its capacity, does not contain the substances listed in Annex II.” It then goes on to say that the tolerated levels of those substances in homogeneous materials are as set out above.

The Directive also specifies the obligations faced by manufacturers, authorised representatives, importers and distributors. In summary these are:

For Manufacturers: (*Article 7*)

- a) Ensure that EEE placed on the market complies with the requirements
- b) Draw up technical documentation and carry out internal production control procedure as in Annex A to Council Decision 768/2008/EC
- c) Where compliance has been demonstrated by the procedure draw up an EU declaration of conformity and affix the CE marking
- d) Keep the technical documentation and EU declaration of conformity for 10 years after the EEE is placed on the market
- e) Ensure that procedures are in place so that series production remains in conformity
- f) Keep a register of non-conforming EEE and product recalls and inform distributors
- g) Ensure that EEE bears a type, batch or serial number
- h) Include their name, registered trade name or registered trade mark and address is marked on the EEE (the address must be a single point of contact)
- i) Having reason to believe EEE does not conform, modify, withdraw or recall it and notify the appropriate national authorities
- j) In response to a reasonable request, provide the national enforcement authorities with information and documentation necessary to demonstrate conformity; this must be in a language that can be easily understood by that authority.

For Authorised Representatives: (*Article 8*)

- a) Must be mandated in writing by the manufacturer to carry out specific activities or tasks; these cannot include the manufacturers obligation under a) above or the manufacturers obligation to draw up the technical documentation
- b) Carry out all the tasks mandated by the manufacturer. The mandate must include at least the following;
  - keep the EU declaration of conformity and the technical documentation at the disposal of national surveillance authorities for 10 years following the placing on the market of the EEE,
  - further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of an EEE with this Directive,

— cooperate with the competent national authorities, at their request, on any action taken to ensure compliance with this Directive of EEE covered by their mandate.

For Importers (*Article 9*)

- a) Only place compliant equipment on the EU market
- b) Before placing EEE on the EU market ensure the manufacturer has carried out the conformity assessment procedures, drawn up the technical documentation, keeps a register of non-compliant EEE and affixed a type, batch or serial number; ensure that the EEE bears the CE marking and is accompanied by the required documentation
- c) Having reason to consider or believe that EEE is not compliant, do not place it on the EU market until it has been brought into compliance, and inform the manufacturer and national authorities to that effect
- d) Indicate on the EEE their name, registered trade name or registered trade mark and the address at which they can be contacted
- e) Keep a register of non-compliant EEE and EEE recalls and keep distributors informed
- f) Having reason to believe that EEE they placed on the market is not compliant, immediately take steps to modify, withdraw or recall it as appropriate and immediately notify the national authorities in each Member State where the EEE was made available of the nature of the non-compliance and the corrective measures taken
- g) Keep a copy of the EU declaration of conformity available for 10 years after the EEE was placed on the market, and ensure the technical documentation can be made available to the national authorities on request
- h) In response to a reasonable request by the national authorities, provide all the documentation and information necessary to demonstrate that the EEE conforms with the Directive in a language that can be readily understood by that authority, and cooperate with the authority on any action taken to ensure compliance with the directive of any EEE they have placed on the market.

For Distributors: (*Article 10*)

- a) When placing EEE on the market, use due care in relation to the requirements, particularly regarding CE marking, and ensuring accompanying documents are in a language that can be easily understood by consumers and other end users in the member State in which the EEE is to be made available. Ensure that manufacturers and importers have complied with the requirements regarding identification (type, batch, serial number) and marking of name, trade name or trademark and contact address
- b) Having reason to believe that EEE is not in conformity, not make it available until it has been brought into conformity and informing the manufacturer or importer as well as the national authorities to that effect
- c) Having reason to believe that EEE they placed on the market is not compliant, ensure corrective measures are taken to modify, withdraw or recall it as appropriate and immediately notify the national authorities in each Member State where the EEE was made available of the nature of the non-compliance and the corrective measures taken

- d) In response to a reasonable request by the national authorities provide all the documentation and information necessary to demonstrate that the EEE conforms with the Directive in a language that can be readily understood by that authority, and cooperate with the authority on any action taken to ensure compliance with the directive of any EEE they have placed on the market.

**Manufacturer’s obligations transferred to Importers or Distributors (Article 11)**

Under certain circumstances, such as when an importer or distributor places EEE on the market under his name or trademark, or he modifies the EEE in such a way that compliance with the Directive may be affected, that importer or distributor will be considered to be the manufacturer and will be subject to all the obligations that a manufacturer has under the Directive.

**Identification of Economic Operators (Article 12)**

Any economic operator (business or trader) must, on request by the national authorities, supply details of any other business or trader who has supplied them with EEE or to whom they have supplied EEE. This obligation lasts for 10 years from the date of supply.

**EU declaration of conformity (Article 13)**

The declaration of conformity must confirm that it has been demonstrated that the requirements of the directive in relation to the hazardous substances have been met.

A model form of the declaration is provided in Annex VI of the Directive, as is reproduced below:

**EU DECLARATION OF CONFORMITY**

1. No ... (unique identification of the EEE):
2. Name and address of the manufacturer or his authorised representative:
3. This declaration of conformity is issued under the sole responsibility of the manufacturer (or installer):
4. Object of the declaration (identification of EEE allowing traceability. It may include a photograph, where appropriate):
5. The object of the declaration described above is in conformity with Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (\*):
6. Where applicable, references to the relevant harmonised standards used or references to the technical specifications in relation to which conformity is declared:
7. Additional information:

Signed for and on behalf of:

.....  
(place and date of issue):

(name, function) (signature):

The declaration must be translated into the language or languages required by the Member State of the market where the EEE is placed or made available. By drawing up the declaration the manufacturer assumes responsibility for compliance of the EEE with the Directive.

*(Note: It is not clear from the text of the Directive whether this declaration of conformity can be incorporated into the declaration(s) of conformity with other Directives such as MID, NAWI, Low Voltage, EMC, ATEX, or whether it must be a stand alone document. This matter needs to be clarified when the UK implementing regulations are made and Guidance Notes are issued.)*

#### **CE Marking** (Articles 14, 15 & 16)

The CE marking must follow the general rules set out in REC Regulation 765/2008.

The marking must be visible, legible and indelibly fixed to the EEE or its data plate. If this is not possible because of size or nature of the EEE, the markings must be affixed to the packaging and documentation. The marking must be affixed before the EEE is placed on the market.

Member States should introduce enforcement regimes to ensure correct application of CE markings and develop sanctions and penalties for infringements.

In the absence of evidence to the contrary, Member States must assume compliance of EEE bearing the CE marking. Material and components which have successfully undergone tests and measurements set out in harmonised standards shall be assumed to comply with the requirements.

#### **Market Surveillance** (Article 18)

Member States are required to establish market surveillance regimes to monitor compliance with this Directive as with other applicable Directives.

#### **Exemptions** (Articles 4.4 and 4.5)

Certain EEE are exempted either permanently or temporarily from the requirements regarding the presence of hazardous substances, briefly these are:

Cables or spare parts for the repair, reuse, updating of functionalities or upgrading of capacity of;

EEE placed on the market before 1 July 2006

EEE which benefited from exemption and which was placed on the market before that exemption expired.

Spare parts recovered from EEE placed on the market before 1 July 2006 and used in equipment placed on the market before 1 July 2016.

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