Questionnaire for 2nd area of review: EEE newly in scope

Technical and socio-economic considerations relevant for assessing the impacts of various possible amendments to Articles 2(2), 4(3) and 4(4).

Background

Article 24(1) of the RoHS Directive[1] states that:

"No later than 22 July 2014 the Commission shall examine the need to amend the scope of this Directive in respect of the EEE referred to in Article 2, and shall present a report thereon to the European Parliament and the Council accompanied by a legislative proposal, if appropriate, with respect to any additional exclusions related to that EEE."

The Oeko-Institut has been appointed within a framework contract to provide the European Commission with further input aimed at substantiating the impact assessment of possible adjustments to the scope of the RoHS Directive. [2]

In 2008 the European Commission launched the recast of the RoHS 1 Directive 2002/95/EC in order to strengthen and adapt the existing law. A proposal for the RoHS recast (COM(2008) 809 final) was published in December 2008, accompanied by an impact assessment. This Commission proposal introduced new definitions and extended the original RoHS 1 scope to medical devices and monitoring and control instruments.

Substantial changes were made to this proposal by the Council and the Parliament before adoption on 8 June 2011. One of the significant changes included the introduction of a product category "*other electrical or electronic equipment - EEE*" (i.e. the introduction of an "open scope" making the Directive applicable to all EEE) and a *broader interpretation of EEE* as a result of a new definition of the dependency on electricity. In practice, these two changes have extended the scope of products that are required to comply with the RoHS Directive substance restrictions. Products that were previously not under the scope of RoHS 1, but that are now required to comply with the substance restrictions are from herein after described as „products newly in scope"

RoHS 2 foresees a transitional arrangement until 22 July 2019 for electrical and electronic equipment that was formerly outside the scope of RoHS 1 but that is now in scope (see Article 2(2)). The transition period does not change the legal status of these products as non-compliant, it only means that products newly in scope may still be placed and circulated on the EU market until 22 July 2019, even if they do not comply with the substance

[1] Directive 2011/65/EU, available under:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011L0065:EN:NOT.

[2] Contract is implemented through Framework Contract No. ENV.C.2/FRA/2011/0020 led by Eunomia

restrictions. The market access provided in Article 2(2) is relevant only for products that must newly abide to the Article 4(1) restrictions, i.e., for products falling under categories 8, 9 and 11 and for products newly included in the scope of categories 1-7 and 10.

In general, RoHS restrictions apply to products when they are placed on the market. If a product was compliant at the time it was placed on the market, it may thereafter be circulated without further restrictions. However, only compliant products (at the time they are placed on the market) can benefit from this protection from retroactive measures. In this context, the Article 2(2) transition period has a number of retroactive side-effects.

- As a consequence of the current wording, non-compliant products that have been placed on the market[3] between January 2013 and July 2019, are not allowed any secondary market operations after 22 July 2019. This affects all products newly in scope, including non-compliant medical devices and monitoring and control instruments (EEE categories 8 and 9) placed on the market before their specific Article 4(3) compliance dates (22 July 2014/2016/1017).
- Furthermore, Article 4(4) lists spare part provisions for the old product categories and for medical devices and monitoring and control instruments. The spare part provisions correspond to the product group compliance dates in Article 4(3), so that old products containing RoHS restricted substances can still be repaired later on, with spare parts that contain RoHS substances. This is based on the principle that in most cases the extension of the EEE life-time is both economically and ecologically desirable. However, Article 4(4) does not provide a spare parts provision for products newly in scope, other than medical devices (Cat. 8) and monitoring and control instruments (cet. 9), meaning that other products newly in scope, placed on the market lawfully until July 2019, cannot be repaired unless spare parts are compliant with the requirements of the RoHS directive.

The EU COM is considering making some adjustments to Article 2(2) and/or to Articles 4(3) and 4(4) respectively. In this regard, information is sought to clarify the existence and the range of impacts that may be relevant for stakeholders associated with the manufacturing operations, market operations and use of products newly in scope. A none-exhaustive list of potential impacts includes:

- Impacts to stakeholders where products newly in scope shall not enjoy secondary market operations throughout the full product service life
- Impacts to stakeholders where products newly in scope shall not be able to be repaired throughout the full product service life

[3] According to Article 3(12) of the RoHS 2 Directive, "'placing on the market' means making available an EEE on the Union market for the first time

- Impacts to stakeholders stemming from the operations required to allow for products newly in scope to become compliant

The objective of this consultation and the review process is thus to collect and to evaluate information and evidence to establish the various environmental, the economical and the social impacts that the possible changes to Articles 2(2), 4(3) and 4(4) may result in. Additionally, information clarifying the application of RoHS regulated substances (see Annex II of Directive 2011/65/EU) and the technical aspects of their substitution in such products is also of interest.

The following questions have been formulated to assist in the collection of information from the various stakeholders of relevance, including industry and its supply chain, secondary market operators, repair operators, consumers etc., concerning possible impacts that they may have in relation with possible changes.

If you would like to contribute to the stakeholder consultation, please answer the following questions. Please be aware that some of the questions may refer to specific stakeholder groups. Please indicate if certain aspects are of less relevance for your type of organisation or if you understand them to be irrelevant for certain products.

In case parts of your contribution are confidential, please clearly mark relevant text excerpts or provide your contribution in two versions (public /confidential).

Questions

1. **Contact Information**
   - Name: _____
   - Organization: _____
   - Email: _____
   - Telephone: _____

2. **Area of activity (more than one is possible):**
   - ☐ Industry;
   - ☐ Retail/distribution;
   - ☐ Rent/repair business;
   - ☐ Industry/business association;
   - ☐ RoHS enforcement;
   - ☐ RoHS analysis;

- ☐ Environmental NGO;
- ☐ Consumer NGO;
- ☐ Institute/consultancy;
- ☐ EU Member State Representative;
- ☐ International agency / organisation;
- ☐ Other - Please specify: _____

3. EEE newly in scope

Please specify products of relevance for your organisation that are understood to be newly in the scope of the RoHS Directive and provide details regarding the following questions. You may use the table template provided below for this purpose.

a. If the product or application falls under categories 1-7 or 10, please explain why this it is considered to be newly in scope, i.e. why it was not required to be compliant with the RoHS substance restrictions under the RoHS 1 regime;

b. Do similar products or applications exist that were already in the scope of RoHS 1? Please explain the differences concerning compliance requirements;

c. Please provide data concerning the EU market share in relation to the general market of the product/ application.

d. Please provide information as to the range and average service life of the product or application. If relevant please detail differences relevant in this regard to certain models or sub-types.

e. Please state if repair of products or applications is common practice. Please provide details of various components or parts of relevance in this regard.

f. Please specify if secondary market operations are common for products/ applications mentioned and provide information as to such practices (leasing; renting; secondary sales operated by retailers and/or by consumers, etc.). Please provide detail as to how often such operations occur

	Hedge Trimmers/ Ignition Modules	Product/ application	Product/ application	Product/ application
Why is product/ application considered newly in scope				
Similar products/ applications already in the scope of RoHS 1				
Product market				

	Hedge Trimmers/ Ignition Modules	Product/ application	Product/ application	Product/ application
share: General and in the EU				
Service life				
Reparability				
Secondary market operations				

4. Compliance of EEE newly in scope

The RoHS Directive restricts the use of certain hazardous substances in EEE that is to be marketed on the European market (2011/65/EU, Annex II). Annex II specifies maximum concentration values of the different hazardous materials that are tolerated by weight in homogeneous materials

The hazardous substances listed in Annex II at present, as well as the tolerated maximum concentration values (%/weight) are listed below:

- Lead (0,1 %)
- Mercury (0,1 %)
- Cadmium (0,01 %)
- Hexavalent chromium (0,1 %)
- Polybrominated biphenyls (PBB) (0,1 %)
- Polybrominated diphenyl ethers (PBDE) (0,1 %)

Please provide information as to the presence of RoHS substances in the products/applications mentioned in section 3 of this document. In your response please consider the following questions. You may use the table template provided below for this purpose.

a. Please specify what RoHS regulated substances are present in the product/applications specified above, including information as to concentration values and quantities of substance in the homogeneous material and per product.

b. Please specify in which components or product parts RoHS regulated substances are present.

		Product/ application	Product/ application	Product/ application
Presence of RoHS regulated substances (% weight & quantity of substance):	Lead			
	Mercury			
	Cadmium			
	Hexavalent chromium			
	Polybrominated biphenyls (PBB)			
	Polybrominated diphenyl ethers (PBDE)			
Components and parts of relevance				

5. Substitution of RoHS substances in EEE newly in scope

For a product or application to be defined as compliant with the RoHS substance restrictions:

- either the use of RoHS regulated substances must be avoided (either through substitution or elimination[4]); or
- the application must be listed in Annexes III or IV of the RoHS Directive providing an exemption for the use of the RoHS substance in certain cases for a limited period of time.

Please provide information as to the efforts towards compliance that are underway or that are planned for the products/ applications mentioned in section 3 of this document. In your response please consider the following questions. You may use the table template provided below for this purpose.

a. Please provide information as to the availability of possible alternatives (substance or technological) on the market.

b. Please elaborate as to their possible use in the products/ applications mentioned in question 3 in terms of the efforts towards compliance.

c. Please state if the use of possible alternatives would result in a change of product characteristics, and explain what changes may be relevant in this respect.

[4] Substitution is understood to regard cases in which the hazardous material can be replaced by using another chemical substance, i.e., a substance alternative. Elimination is understood to regard cases in which the technology in which the RoHS substance is present is replaced so that the need for use of the hazardous substance is eliminated.

d. Please explain the various phases that are being undertaken (or that are planned) in order to facilitate the compliance of products, elaborating on the time assumed to be needed for each stage. You may refer to a possible time range, explaining the uncertainties that apply.

		Product/ application	Product/ application	Product/ application
Availability of alternatives for the relevant RoHS regulated substances	Lead			
	Mercury			
	Cadmium			
	Hexavalent chromium			
	Polybrominated biphenyls (PBB)			
	Polybrominated diphenyl ethers (PBDE)			
Applicability of possible alternatives				
Changes to product characteristics resulting from alternative application				
Roadmap towards substitution – required steps and time span				

6. Impacts of compliance

Please estimate what costs and/or benefits your organisation, other stakeholders and / or society may have if one of the following scenarios is to be implemented. Where relevant, please specify how these costs/ benefits are allocated between different product/ applications mentioned in section 3. You may use the table template provided below for this purpose.

- RoHS 2 legal text to remain unchanged;
- Amendment of Article 2(2) to exclude Category 8 and 9;
- Incorporation of Article 2(2) into Article 4(3) with the 22.7.2019 as compliance date, thus allowing secondary market operations for non-conform products newly placed on the market before July 2019;

- Incorporation of Article 2(2) into Article 4(3) with an earlier compliance date (to be agreed upon with the EU COM), thus allowing secondary market operations for non-conform products newly placed on the market before the respective date;
- The addition of a spare part provision for non-conform products newly coming into scope and placed on the market before 2019

In this regard please detail:

a. Possible costs for your organisation or other stakeholders tied with compliance of a specific product category, in relation to the above mentioned scenarios - one.time costs such as investments as well as annual costs, such as costs for purchasing resources)

b. Possible benefits that may incur to your organisation or other stakeholders in relation to the above mentioned scenarios – please clarify when or over what period benefits are expected.

c. Possible impacts to health and to the environment associated with the scenarios mentioned above

d. Possible impacts on employment that may be associated with the scenarios mentioned above (impacts on required skills; impacts on number of employees; etc.)

e. Possible impacts on competition that the various scenarios may have in regard to your organisations general activities or those tied with a specific product category. Please elaborate in this regard concerning impacts on import and export of products/ applications.

f. Possible impacts on the supply of certain products or components that are relevant to the various scenarios detailed above.