

Input to the “Stakeholder Consultation with regard to the Study concerning the Review of Scope of Directive 2011/65/EC”

EEE newly in the scope

LightingEurope thanks the Öko-Institut for the opportunity to provide input with regard to the study on assessing the impacts of various possible amendments to Articles 2(2), 4(3) and 4(4). In this paper LightingEurope would like to share its opinion with regard to products, which are considered as “EEE newly in the scope”.

Since the open scope was introduced into RoHS directive, many products which were before non-EEE are now falling into Category 11 if put on the market with an integrated lighting function. A typical case is furniture, which is normally a non-EEE product. Typically, the same type of furniture can be sold with and without a LED luminaire. In case it is sold with an integrated LED luminaire the whole furniture has to be RoHS compliant, including those parts which are normally not EEE, and were probably never assessed against RoHS requirements. Normally, these products are not assessed if sold without LED luminaire. Conformity assessment for the whole product, including all nonelectrical parts, has to be performed according to harmonized European Standard EN50581.

This obligation on RoHS conformity:

- increases the administrative burden on clients of the lighting industry, especially the burden of producers of non EEE products who have no supply chain communication (as found in EEE industry during the past years).

- increases the risk of non-compliance for the whole product, due to missing awareness of producers of products normally not in the scope. Also the supply chain is not aware of the requirements, which are different for products either with or without lighting function.
- poses a legal uncertainty whether lighting is an integrated part of the non-EEE product or can be separated and used as a fully functional product.
- now includes a huge variety of products for which a reliable impact assessment on cost and benefits is not available and even difficult to prepare.
- is no longer aligned with the WEEE Directive as many of these products are not seen as WEEE in case of end of life.
- Will create the need of hundreds of exemption requests (Annex III) for products which were never intended to be in the scope.

The logical reaction of the producers of “EEE newly in the scope” is to avoid costs and risks by not including lighting in their products. Therefore, LightingEurope believes that the open scope has negative impact:

- on the lighting industry in the form of loss of business
- on producers of category 11 products in the form of increased cost and loss of product diversification
- and on consumers in form of decrease of product functionality
- all while the positive environmental impact is not known and based largely on estimations¹.

¹ See BioIS report, for European Commission, DG ENV: Measures to be implemented and additional impact assessment with regard to scope changes, pursuant to the new RoHS Directive, 2012, Annex V, Furniture with secondary electrical functions

Therefore LightingEurope proposes that Article 2(4) is completed with a new paragraph, which would exclude the non-EEE part of category 11 products from the compliance of RoHS requirements. The article would read as follows:

4. This directive does not apply to:

“(k) non-electrical parts of EEE in Category 11 of Annex I, which are using lighting as a non-primary function”

We believe that this paragraph would create legal certainty for many products, which are definitively not electrical products in real life, but which are classified EEE according to Directive 2011/65/EU.

About LightingEurope

LightingEurope is an industry association of 33 European lighting manufacturers, national associations, and companies producing materials. LightingEurope members represent over 1,000 European companies, a majority of which are SMEs; a total workforce of over 100,000 people in Europe; and an annual turnover estimated to exceed 20 billion euros. LightingEurope is dedicated to promoting efficient lighting practices for the benefit of the global environment, human comfort, and the health and safety of consumers.

Answers to the questions of the consultant

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2. Area of activity

Industry association

3. EEE newly in scope

Many non-electrical products, e.g. furniture, are using integrated light sources as an auxiliary function. Until the introduction of the open scope they were not considered as EEE. They belong to category 11 of RoHS directive. The number of such products is growing.

Examples are:

- Furniture with integrated lighting, which cannot be separated (especially many custom made items and individual production)
- Post boxes equipped with LED lighting
- Art/Souvenirs
- Shoes
- Signs
- Music instruments
- Toys (e.g. scooter with LED in Wheel)
- Doors, windows
- Mirror
- etc.

4. Compliance of EEE newly in the scope

LightingEurope is not able to provide exhaustive and precise information as to which RoHS substances other industries are using in their products.

5. Substitution of RoHS substances in EEE newly in the scope

LightingEurope doesn't have information about substitutes.

6. Impacts of Compliance

According to LightingEurope the impact of compliance falls on both sides. For customers of lighting products it increases administrative burden, legal uncertainty and consequently the production cost. For the lighting industry it is the loss of market, loss of new business opportunities, and consequently loss of additional profit.

Legal uncertainty

It is obvious that an electrical part of a complex product, e.g. lighting, which falls in category 5, has to comply with all requirements of RoHS directive. It is unclear however, when a complex product, which consists of a non-EEE and a lighting part falls in category 11 has to be RoHS compliant with regard to the non-EEE part.

The FAQ prepared by European Commission, DG Environment cites the example of a wardrobe with lighting. It suggests that the whole cupboard is EEE, if lighting and cupboard are integrated and cannot be separated into two fully functional units.

FAQ of European Commission, DG Environment, Question 7.1

[...] In order for a product to be EEE, its electricity dependent functions must in principle be integrated.

For the example of a wardrobe with lights, even if sold as a single unit, a distinction between the piece of furniture and the electric/electronic device the piece is or can be equipped with has to be drawn. If the lighting is EEE in itself and both the lighting and the wardrobe can be separated and used as fully functional separate products, only the electric/electronic equipment (the lighting) is in the RoHS 2 scope. The furniture itself would then be outside the scope. [...]

In the opinion of LightingEurope this explanation does not remove the legal uncertainty with regard to the question, what is EEE and what is the notion of integration. While the FAQ provides much appreciated guidance, it is not a

binding, legal document, and introduces further uncertainty by the addition of the word “integral” and “fully functional unit”.

Cost and loss of profit

If producers of typical non-EEE products e.g. furniture or clothing mount lighting on their product, then the final product is considered as “EEE newly in the scope”. Subsequently, the producer of non-EEE product will have to prove that the product doesn’t contain prohibited substances above the allowed limit.

In case of lighting the task is easy. Lighting belongs to Category 5, and it was always EEE. Members of LightingEurope produce RoHS compliant products and are running conformity tests for many years. In contrast to this, it is very likely that the producer of the non-EEE part of the final product is not familiar with the RoHS requirements, not prepared to run RoHS compliance tests, neither administratively, nor financially. Therefore such producer will consider whether to undertake the burden of mounting lighting into its product, and to assume the financial burden.