EECA ESIA

European Semiconductor Industry Association

ESIA Comments on Stakeholder Consultation of Hazardous Substances not restricted by RoHS

To: Ökoinstitut
Cc: DG Environment, DG Enterprise

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Dear Mr Gensch, Ms Gross,

ESIA welcomes the opportunity to raise a number of points related to this study and the process for this present consultation. In addition please find attached an initial feedback from the European semiconductor sector's perspective on the list in the time allowed for the consultation referred to as 'high priority substances' that has been developed by the Ökoinstitut. The ESIA comments on this list represent the best possible feedback at this time.

In terms of procedural and transparency issues and according to the EU's own better regulation principles, stakeholder consultations should run for at least 6 weeks. The timeline for this consultation does not align with this clear Commission objective. Given the substantive nature of the RoHS review being undertaken here and the difficulties that have arisen in the decision making structures with this Directive in the past, we would question how it appropriately serves the review process to have such a quick consideration period on these substances?

ESIA companies are fully committed to ensure the safe handling, minimisation of use and elimination of use where technically possible of hazardous substances used in our production processes. ESIA strongly believes that effective substance management throughout all industrial sectors can only be guaranteed within the REACH regulation framework. In line with DG Environment's policy options, we believe that any review of the RoHS directive must acknowledge the new reality that the REACH regulation is currently being prepared for across the wider electronics and industrial sectors. To avoid patchwork legislative solutions to substance restrictions going forward which do not add value in terms of protecting the environment and human health, the European semiconductor industry feels that all future substance restrictions should be handled under the REACH framework. Dealing with substances in a holistic and comprehensive legislative manner across all sectors of industry offers clear benefits for the aim of the RoHS directive as opposed to the narrow context of one sector of industry. The semiconductor industry would reiterate again that proper implementation of the current WEEE directive should also be of primary concern when approaching how best in policy and cost effective terms to achieve the stated aims.

ESIA believes that any potential addition of 'new'substances to RoHS should be on a scientific basis. A clear understanding should also be achieved of the implications of any future addition to RoHS for the development, qualification and supply chain cycle times of the industry. The restriction of the use of any substance requires a sustainable approach, which takes into consideration; the technical functionalities behind why particular substances are used, the hazardous properties of the potential alternatives where feasible, proper risk assessment, and a consideration of the social and economic factors. All these elements are key aspects in the framework for better regulation.

Methodology used for the identification of *'High priority substances in EEE'*

We understand that Ökoinstitut has used Article 57 of the REACH Regulation as a basis for identifying "high priority substances (HPS)" used in EEE and is populating its current inventory of HPS "based on declarations provided by suppliers and manufacturers of EEE, existing studies, XRF-analyses and other information". We are concerned about the Ökoinstitut process for developing this inventory. Firstly, we do not understand why there is exclusive use of Article 57 and why other Articles in the REACH Regulation (of equal legal and policy standing) have been not included in the Ökoinstitut

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approach. Secondly, the REACH Regulation sets down a clear process for identifying SVHC and placing them on the list of substances requiring authorisation (i.e. Annex XIV of REACH) – at no stage is this REACH methodology similar to that being currently used by Ökoinstitut.

We believe that if Ökoinstitut is to use a specific article of REACH in its methodology for identifying HPS in the revised RoHS Directive, then it must pay equal attention to the other articles in REACH which are of at least equal relevance to such a methodology (articles 7.2, 58, 59..). Considering all of the provisions in REACH, not just Article 57, is crucial if a proportionate and balanced use of the REACH Regulation is to assist in this process. We would question why if REACH article 57 is used as a sufficient basis for identifying HPS in EEE that the other articles of REACH are not seen of part or equal relevance to the development of a methodology?

In particular, we believe that the following articles of REACH should be considered as relevant in the current phase of the Ökoinstitut study;

- On the issues of "substances in articles", it is stated in Article 7.2 of the REACH Regulation that "Any producer or importer of articles shall notify the Agency, in accordance with paragraph 4 of this Article, if a substance meets the criteria in Article 57 and is identified in accordance with Article 59(1), if both the following conditions are met:
  (a) the substance is present in those articles in quantities totalling over 1 tonne per producer or importer per year;
  (b) the substance is present in those articles above a concentration of 0,1 % weight by weight (w/w).

In using Article 57 of REACH as a basis for establishing the criteria for identifying HPS in EEE, Ökoinstitut has not given any, reference to the wording of Article 7.2 above, which clearly refers to the 1 tonne threshold per producer or importer per year AND the concentration level in products above 0.1% w/w as the two preconditions determining whether or not a substance should even be notified to the Chemicals Agency. Given that the RoHS Directive refers to products, we believe that the wording of Article 7.2 should also be considered as relevant to any process which aims to set down a proposed methodology for listing HPS/SVHCs in EEE.

- there is no reference to the provisions under REACH Article 58, which clearly set down the conditions for placing and prioritizing SVHC on REACH's list of substances requiring authorisation. If REACH Article 57 is relevant to the inventory methodology, then REACH Article 58 should also be viewed as relevant. In particular, Article 58 (1) refers to a clear process (as defined under Article 133 (4) of REACH) for the placing of SVHC on Annex XIV. Article 58 (3) clearly specifies a process for prioritization of SVHC for inclusion on Annex XIV and Article 58(2) clearly states a basis for exempting uses and categories of use in REACH authorisation. Article 58 (4) also clearly refers to a confidentiality procedure and protection of confidential business information regarding the publication of any lists of SVHC requiring authorisation under REACH.
- Article 59 also sets down a very clear process for the "identification of substances referred to in Article 57".

We look forward to clarifying these points with you in due course and getting your feedback and apologise in advance if our analysis is missing key elements that you have already factored into your current HPS inventory methodology.

We would welcome the opportunity for our experts to attend and to input technical contributions in the next phase of the RoHS review process by being involved with the stakeholder expert workshop on May 6th. Thank you in advance.

Yours sincerely,

Martin Spat
ESIA Director