Information Technology Industry Council
Leading Policy for the Innovation Economy

March 28, 2008

Mr. Carl-Otto Gensch
Öko-Institut e.V.
PO Box 50 02 40
79028 Freiburg
Germany

Subject: RoHS Directive Substances Study

Dear Mr. Gensch,

I am writing to you on behalf of the Information Technology Industry Council[1] regarding your current study on hazardous substances not restricted by the EU RoHS Directive.

Many of our member companies have participated in a cross industry information gathering exercise for the 46 substances that you put out for public consultation, either directly or via European trade associations representing our global industry. We appreciate the opportunity to provide our input.

We would like to continue to express our concern with regard to the methodology which was used to conduct this analysis, and the process applied to conduct this analysis. We would also like to reiterate our concern, which we have previously communicated to the Commission, that the expansion of RoHS would be preemptive and duplicative of REACH. REACH is a recognized and preferred model for applying substance restrictions, given its analytical approach, inclusion of risk assessments and evaluation of uses before setting restrictions. All of these criteria are critical to the success of your environmental aims. We believe that the REACH approach better ensures industry's success in performing test/analysis to validate replacement materials; manage product migrations and redesigns; achieve the new restrictions; and, assist in validating uses which are still without alternatives that meet the performance or other customer/product requirements.

Regarding the methodology which has been used in your study, we note that you have applied criteria for assessing these substances primarily from Art. 57 of the REACH Regulation, which focuses on high priority substances (HPS). We are strongly of the opinion that this is not a balanced and proportionate approach. We appreciate the aim of applying a REACH-type approach to the RoHS Directive; however, to achieve this it is important to apply other equally important criteria from REACH as described in the provisions of Art. 7.2, Art. 7.3, Art. 58 and Art.59. These aspects would have, amongst other things, considered critical aspects such as volumes of substances in articles, human exposure and inventory development.

[1] A U.S. industry association, ITI represents the leading providers of information technology (IT) products and services. ITI is the voice of the high tech community, advocating policies that advance industry leadership in technology and innovation; open access to new and emerging markets; promote e-commerce expansion; protect consumer choice; and enhance the global competitiveness of its member companies. For more information on ITI visit: www.itic.org

Regarding the survey process, we understand that under the auspices of better regulation, the EU introduced a minimum period for such a stakeholder consultation of six weeks; this has not been followed in this case. We therefore ask for your serious consideration in finding a reasonable means to ensure critical information is not missed by both this shortened period and reduced scope of risk analysis. Decisions that are set in motion today will have long-term ripple effects and could have many negative unintended consequences.

We also must address the global dimension of the inclusion of any additional substances under RoHS. While not specifically included in the scope of your study, the fact remains that the existing RoHS Directive in the EU, with its six substance bans and numerous exemptions, has had a truly global impact. As you are aware, other geographies such as China, India, Australia, Korea and certain parts of the U.S., have adopted a similar approach but unfortunately introduced quite different laws. Our industry is global with a highly intricate supply chain; what happens in the EU affects our industry worldwide. As requirements continue to proliferate, it is critical for us to have a level playing field of coordinated international rules and standards wherever possible. Six existing substances, regulated in different ways across geographies, has already caused significant challenges for our industry, and confusion for our global customers. Therefore, in deciding whether or not to add any new substances, it is critical that the possible negative impact on international trade be seriously weighed.

Finally, given the existence of REACH, ITI members believe that having two directives in the same region attempting to drive the same results through different and conflicting means and timelines will only contribute to industry confusion and regulatory uncertainty. ITI points to the Commission's Better Regulation Initiative which would be well served by handling any additional substance restrictions under the REACH directive, by both simplifying and achieving a higher quality result (i.e. through REACH's more risk-based analytical approach).

We appreciate the opportunity to voice our concerns and would be happy to discuss with you any of the above comments in more detail.

Sincerely yours,

Rick Goss
Vice President of Environment and Sustainability
Information Technology Industry Council