

Stakeholder consultation concerning the review of the scope of provisions of the RoHS 2 Directive pursuant to Article 24(1)

1 Introduction

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 aimed at the alignment with REACH (as regards the assessment of substances under RoHS) and with the New Legislative Framework (CE Marking and EU Declaration of Conformity); it also 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 as Directive 2011/65/EU. Also known as RoHS 2. The Directive legal text is available under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011L0065:EN:NOT>

The most 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. These changes to the Commission recast proposal were not impact assessed; nevertheless the RoHS 2 Directive 2011/65/EU (RoHS 2 Directive, hereafter referred to as RoHS 2), published in the OJ in July 2011, incorporates all these elements (see RoHS 2 Articles 2(1), 3(2) and Annex I category 11).

The RoHS 2 Directive, by its Article 2(3), provides a 10 entry list of specific equipment which is excluded from the scope, e.g. aerospace and military equipment, means of transport, large-scale fixed installations, and photovoltaic panels. These are, at the moment, the only EEE that do not fall under the scope of the new Directive.

Also introduced by the Council and the Parliament, 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. The implied change in grace period was also not subject to impact assessment.

Immediately after the adoption of RoHS 2, the Commission launched a study¹ for a screening of the un-assessed scope related changes from the 2008 Commission proposal to the final RoHS 2 text. The study identified three different types of scope related problems:

- The need for one or two additional exclusions of product groups from the scope, namely electric bicycles and pipe organs.
- RoHS restrictions apply to products when they are placed on the market. Once on the market, they may 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 significant unintended retroactive side-effects. As a consequence of the current wording, non-compliant products that have been placed on the market (made available for the first time) 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).
- 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 the original spare parts. 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 and monitoring and control instruments, past 22 July 2019, meaning that products falling within this category, placed on the market lawfully until July 2019, cannot be repaired after 22.7.2019 if cables and spare parts are not RoHS compliant.

Pursuant to Article 24(1) of the Directive, no later than 22 July 2014, the Commission is to examine the need to amend the scope of the Directive 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 European Commission is planning to introduce the necessary adjustments to the scope provisions in the RoHS Directive, i.e. exclusions from the scope and adjustments to Article

¹ See BIO Intelligence Service (2011), Measures to be implemented and additional impact assessment with regard to scope changes, pursuant to the new RoHS Directive, Final Report prepared in collaboration with ERA Technology for the European Commission, DG ENV, available under the following [link](#).

2(2), 4(3) and 4(4), if proven necessary by the results of the Commission Impact Assessment, in the course of the mandatory Article 24(1) review.

The following input to the Commission Impact Assessment is already available:

- A study by COWI for the Danish Ministry of the Environment of 2010, addressing selected aspects and product categories under a potential open RoHS 2 scope (<http://www2.mst.dk/udgiv/publications/2010/978-87-92617-50-7/pdf/978-87-92617-51-4.pdf>);
- A study by BioIS and ERA for the European Commission, identifying possible problem areas due to the scope related changes in the RoHS 2 text after the Commission recast proposal; final report online since July 2012 (<http://rohs.biois.com/product-group-factsheets>); and
- A UK study exploring some of these issues from an economic perspective; November 2012 (http://www.legislation.gov.uk/ukxi/2012/3032/pdfs/uksifia_20123032_en.pdf).

The European Commission has appointed the Oeko Institut² to give additional input to the Commission Impact Assessment for a review of the scope of provisions of the RoHS 2 Directive pursuant Article 24(1) concerning two main areas identified for review:

- Technical and socio-economic considerations concerning a possible exclusion for electric bicycles from the scope of RoHS; and
- Technical and socio-economic considerations relevant for assessing the impacts of various possible amendments to Articles 2(2), 4(3) and 4(4).

It should be noted that no further exclusions of product groups from the scope, besides electric bicycles and pipe organs are being considered. Please refrain from submitting requests for further product group exclusions in this consultation process as, such consideration are beyond the scope of this project.

For more information on these areas, please refer to the specific questionnaires that can be found in the Consultation section (<http://rohs.exemptions.oeko.info/index.php?id=208>) under “electric bicycles”: <http://rohs.exemptions.oeko.info/index.php?id=209> and “EEE newly in scope”: <http://rohs.exemptions.oeko.info/index.php?id=210>.

Please note that the role of Öko-Institut is only to collect and evaluate the information provided by stakeholders with a goal to provide the Commission with a recommendation

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

regarding the mentioned topics. Any decision making, however, is the sole responsibility of EU institutions.

Neither the fact that a stakeholder consultation is being launched, nor the results of this stakeholder consultation should be interpreted as a political or legal signal that the Commission intends to take a given action.

2 Consultation scope

The scope of the consultation concerns the two main areas for review.

Table 1 Areas that will be reviewed during this project

No.	Area of review
1	Technical and socio-economic considerations concerning a possible exclusion for electric bicycles from the scope of RoHS.
2	Technical and socio-economic considerations relevant for assessing the impacts of various possible amendments to Articles 2(2), 4(3) and 4(4).

3 How to submit a stakeholder contribution

The following general guidelines should be taken into account:

- Refer to the area of review listed in **Fehler! Verweisquelle konnte nicht gefunden werden..**
- Download the **questionnaire** on the area of review into account (see the specific sections under: electric bicycles: <http://rohs.exemptions.oeko.info/index.php?id=209> and EEE newly in scope: <http://rohs.exemptions.oeko.info/index.php?id=210>).
- Provide information in response to the various questions as well as other information that you consider of importance to this process. To support your comments, please **provide relevant technical and scientific evidence**. Where relevant please provide quantitative data, photographs or diagrams to illustrate your views. Provision of third party data and information may be beneficial to further support your view. **Sources of information** should be referenced where possible.
- Provide your input to the consultation as early as possible in order to allow other stakeholders to comment.
- As this process is a public one, the use of confidential information to support a certain view is limited. You may submit confidential information, however please bear in mind that should information marked as confidential be found to be essential for supporting a certain point, you shall be requested to reformulate it so that it can be made public. In

such cases you shall need to give explicit agreement to the Commission and the project team to disclose the relevant information on their website.

- Nevertheless, comments shall be clearly marked “**NOT FOR PUBLICATION**” if they are not to be posted as comments on the consultation website. Please also refrain from submitting confidential and non-confidential information mixed in one document!
- Please refrain from submitting several identical comments in order to support a position / comment. It is more useful and efficient to include a cover letter stating that a submission is supported by several parties.
- Submit **compact and comprehensive information** instead of very large and extensive documentation. It will facilitate formulating the need for further information.
- Always include **your contact details** (or of the person responsible for further contact with name, organisation, email and phone number). The evaluation of submitted information will normally lead to further questions which we need to address to you directly.
- If you submit documents in **PDF-formats**, please make sure that text can be marked and copied selectively from these documents in order to avoid retyping (which is a possible source of mistakes) when summarising your arguments for the review report.

Interested parties are invited to send their comments by e-mail, at the latest on **10 March 2014**, to rohs.exemptions@oeko.de or by post to:

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Responses submitted electronically will be posted on this web site as they are received, unless respondents specifically request that their contribution should not be published. In the latter case, responses should be clearly and visibly marked with the words “**Not for publication**”.