

## Development of Legislation and Other Instruments

To:  
Öko-Institut e.V.  
Carl-Otto Gensch  
rohs.exemptions@oeko.de

### Comments from the Swedish Chemicals Agency on Consultation 2014-1 – Stakeholder consultation to provide additional input to the commission impact assessment for a review of the scope of provisions of the RoHS 2 Directive pursuant Article 24(1)

In the Guidance document provided by Öko-Institut e.V. for this consultation three different types of scope related problems are identified:

- There may be a need for an additional exclusion of electric bicycles from the scope. (*1st Area of Review*)
- Article 2(2) transition period has significant unintended retroactive side-effects regarding the circulation on the market of non-compliant products that have been placed on the market (made available for the first time) between January 2013 and July 2019 (*2nd Area of Review*)
- Article 4(4) does not provide a spare parts provision for all products newly in scope. This means that some products cannot be repaired after 22.7.2019 if cables and spare parts are not RoHS compliant. (*2nd Area of Review*)

In the Questionnaire for 2<sup>nd</sup> Area of Review provided by Öko-Institut e.V., five different options are indicated in section 6, see list below. We did not find any explanation to the selected options and the aim and legal consequences of options 2-4 are thus unclear. This is indicated in our comments.

1. RoHS 2 legal text to remain unchanged;
2. Amendment of Article 2(2) to exclude Category 8 and 9;
3. 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;
4. 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;
5. The addition of a spare part provision for non-conform products newly coming into scope and placed on the market before 2019

#### Swedish Chemicals Agency

Mailing address	Visit & delivery	Invoicing address	Phone & fax	Internet	VAT No
Box 2 SE-172 13 Sundbyberg Sweden	Esplanaden 3A SE-172 67 Sundbyberg Sweden	FE 124 SE-838 80 Hackås Sweden	Phone +46 8 519 41 100 Fax +46 8 735 76 98	www.kemi.se kemi@kemi.se	SE202100388001

The Swedish Chemicals Agency has the following comments to the indicated proposals in the consultation.

## 1st Area of Review: Electric bicycles

**Comment:** We are of the opinion that electric bicycles and other two-wheel vehicles which are not type approved shall remain within the scope of RoHS II. Category 7 seems to be the most appropriate category for such equipment.

**Legal text:** We have no specific opinion about where the inclusion of electric bicycles should be documented in the Directive. The important thing is that the legal text is clear enough to avoid misunderstandings.

**Justification:** In the Factsheet about electric bicycles in the Biosis report it is concluded that the electronic components already are RoHS compliant, inclusion of the bicycles in the RoHS directive is beneficial for the internal market and has a slightly positive health impact. Thus, we do not find any reasons to exclude this type of equipment from the scope.

## 2nd Area of Review: Second hand market

### ***Description of the problem in the Guidance document provided by Öko-Institut e.V. for the consultation***

The 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 2014/2016/2017).

### ***Comment:***

It is not clear enough that the compliance date for equipment in category 11 and some other EEE newly in scope is specified in article 2.2.

We are of the opinion that it is beneficial if also non-compliant equipment placed on the market before their specific compliance date and used for its intended purpose after that date can be sold at the second hand market without time restrictions. It needs to be clear that this should be applied to equipment already placed at the EU market and not articles imported as reused equipment or spare parts. We also propose some kind of time limit for “second hand operations” of equipment that never have been operated by an end user.

***Legal text:***

Of the described scenarios we support option number 3 to specify all compliance dates (22 July 2014/2016/1017/2019) for equipment included in categories 8,9, 11 and other EEE newly in scope (i.e. not covered by RoHS I).

As a consequence, we believe that Article 2.2 is no longer necessary and can be deleted.

Provisions for regulation of the second hand market should not be added before the compliance dates in article 4.3. Addition of a new article can be an option.

***Justification:***

The relation between the articles 2.2, 4.3 and 4.4 has led to a lot of confusion for the industry so far. It is beneficial for both the suppliers of EEE and the national authorities if the directive is clear and easy to understand. If all product categories are treated in a similar way that intention is easier to fulfil. To improve the clarity of the Directive we propose the deletion of article 2.2 and inclusion in article 4.3 of the compliance date of equipment in category 11 and other EEE newly in scope.

To not allow circulation of used products at the second hand market would lead to waste of resources. However, there could be a gap from the time when a product is placed on the market until it is delivered to an end user. To avoid tactical measures where subcontractors build up storages with large volumes of non-compliant products just before a new compliance date we propose the addition of a time limit for resale of equipment that has never been operated by an end user.

**2nd Area of Review: Spare parts*****Description of the problem in the Guidance document provided by Öko-Institut e.V. for the consultation***

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. 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.

***Comment***

The Swedish Chemicals Agency support option number 5 with the addition of a spare part provision for non-conform products newly coming into scope and placed on the market before 2019. To not allow the use of spare parts for all failing EEE would lead to waste of resources. Thus, we are of the opinion that it is beneficial if failing products can be restored by the use of spare parts.