Brussels, 10 March 2014
(Sent by e-mail)

To: Carl-Otto Gensch, rohs.exemptions@oeko.de
CC: hans-christian.eberl@ec.europa.eu

RE: 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) – 2nd area of review (EEE newly in scope)

TechAmerica Europe *represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. TechAmerica Europe Member companies are active throughout the technology spectrum, from software, semiconductors and computers to Internet technology, advanced electronics and telecommunications systems and services. Our parent company, TechAmerica is the leading tech association in the US.*

Dear Mr Gensch,

TechAmerica Europe welcomes the opportunity to comment on the ongoing stakeholder consultation on the RoHS Directive scope review, and would like to provide comments on the options set out in section 6 "Impacts of compliance" of the questionnaire.

When the Directive was recast, TechAmerica Europe raised concerns about the changes made to the Commission proposal by Parliament and Council before the Directive was adopted in June 2011. In particular, we expressed our concern at the changes introducing an "open-scope provision" through the amendments creating an "other EEE" product category, which extended the number of products that must comply with the RoHS Directive.

These changes were not in the original Commission proposal and had therefore not been subject to an impact assessment including adequate stakeholder consultation. To address this issue, in 2012 the Commission had an additional impact assessment carried out by BIO IS. The study also analyzed the potential impact of Articles 2(2), 3(4) and 4(4), which it found likely to have "significant environmental, economic and social costs with no or only limited benefits"[1].

Normally, products newly in scope are allowed a transition period so that if they are placed on the market before the end of that period, they can continue to be made available afterwards. However, the wording of the above articles implies that after the end of the transition period, no secondary market

[1] BIO Intelligence Service, *Measures to be implemented and additional impact assessment with regard to scope changes, pursuant to the new RoHS Directive*, European Commission, DG ENV, 6 July 2012

operations can be performed on those products that were not RoHS compliant at the time they were placed on the market, and that would become waste as a consequence. This not only has severe cost and environmental implications (particularly for categories 8 & 9, but also for any EEE that was outside the scope of Directive 2002/95/EC), but is also in contrast with the EU waste hierarchy promoting reuse and recycling. Indeed, the final report of the study concluded that amendments to the articles were desirable, and suggested options for rewording.

We continue to support the options set out in the BIO IS report and are pleased that they have been included in this new consultation, for which we offer the following comments:

- RoHS legal text to remain unchanged:

  We do not support this option for the following reasons:

  The current interpretation of Article 2(2) means that after 22 July 2019, non-compliant category 8 & 9 equipment placed on the market before the end of the transition period cannot (continue to) be made available in the EU. This will have considerable negative socio-economic and environmental effects – not only for producers, but also for European users of this type of equipment e.g. medical facilities and critical infrastructure such as the oil, gas, and power sectors.

  Refurbishment and resale is a usual business activity for these categories, often accounting for 2-5% of producers' turnover. Rental of category 9 test equipment is an additional activity for rental companies, some of which have portfolios of products for rent devoted almost entirely to category 9 products. Customers of such rental products will hence also be impacted. SMEs will be affected in their ability to develop and test new products if access to leased equipment is removed, or second-hand/refurbished products become unavailable.

  In addition, repairers do not always have access to the original technical documentation and will therefore not know whether the EEE was already compliant at the time it was first placed on the market: this could therefore result in compliant EEE being unnecessarily scrapped instead of repaired/resold.

- Amendment of Article 2(2) to exclude category 8&9:

  We understand this option as corresponding to the second option proposed by the BIO IS study (p. 354 of the final report) i.e. "Member States shall provide that EEE that was outside the scope of Directive 2002/95/EC but which would not comply with this Directive, except for medical devices and monitoring and control instruments, may nevertheless continue to be made available on the market until 22 July 2019."

  We support this option as being a clear and necessary improvement on the current situation.

  However, it does not address other EEE that may also be affected i.e. category 11. We would therefore ideally prefer to see a horizontal approach that addresses all equipment that might be affected (see below).

- Incorporation of Article 2(2) into Article 4(3) with 22 July 2019 as compliance date, thus allowing secondary market operations for non-conform products newly placed on the market before July 2019:

We understand this option as corresponding to the first option proposed by the BIO IS study i.e. deleting Article 2(2) and amending Art. 3(4) as follows (also p. 354 of the final report):

"Paragraph 1 shall apply to medical devices and monitoring and control instruments which are placed on the market from 22 July 2014, to in vitro diagnostic medical devices which are placed on the market from 22 July 2016, to industrial monitoring and control instruments which are placed on the market from 22 July 2017 and to any other equipment that was outside the scope of Directive 2002/95/EC which is placed on the market from 22 July 2019."

We support this approach as being a clear and fair solution.

- Incorporation of Article 2(2) into Article 4(3) with an earlier compliance date to be agreed upon with the Commission:

  We would like to highlight the need for predictability in the implementation of the legal provisions. Given the time needed to draft, negotiate, publish and then transpose such a requirement, it is highly likely that this scenario would result in industry not being allowed a sufficient transition period to bring products into compliance.

- Addition of a spare part provision for non-conform products newly coming into scope and placed on the market before 2019

  We understand this option as corresponding to the BIO IS study suggestion on the amendment of Article 4(4) (p. 358 of the final report).

  We support the introduction of a spare parts exclusion for both category 11 and any other EEE that were outside the scope of Directive 2002/95/EC.

As the 2012 BIO IS report already identified the potential impacts of leaving the legal text of the Directive unchanged, and suggested workable options to avoid them, we would encourage the Commission to act swiftly to amend the Directive and bring legal certainty that will benefit both manufacturers and users.

We remain at your disposal for any further clarification you may need, and we look forward to a continued collaboration with you.

Kind regards,

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