European Commission

| INCEPTION IMPACT ASSESSMENT | | | |
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| TITLE OF THE INITIATIVE | **Legislative proposal amending the scope of the RoHS Directive** (restriction of the use of certain hazardous substances in electrical and electronic equipment, 2011/65/EU) | | |
| LEAD DG – RESPONSIBLE UNIT – AP NUMBER | ENV – A.2 – 2012/ENV/009 | DATE OF ROADMAP | 03/12/2015 |
| LIKELY TYPE OF INITIATIVE | Directive of the European Parliament and of the Council | | |
| INDICATIVE PLANNING | *Foreseen adoption: 2nd quarter 2016* | | |
| ADDITIONAL INFORMATION | *http://ec.europa.eu/environment/waste/rohs_eee/studies_rohs4_en.htm* | | |

**This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.**

## A. Context, Subsidiarity Check and Objectives

### Context

The RoHS recast, Directive 2011/65/EU, (RoHS 2), was published in the Official Journal in July 2011. It provided its 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 expanded the scope to cover medical devices and monitoring and control instruments.

RoHS 2 also introduced important new provisions: the "open scope" introduced with the new category 11 "Other EEE not covered by any of the other categories", making the Directive applicable to all electrical or electronic equipment (EEE) and a broader interpretation of EEE as a result of a new definition of the dependency on electricity. These provisions (see RoHS 2 Articles 2(1), 3(2) and Annex I category 11) were not impact assessed.

RoHS 2 Article 2(4) 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, photovoltaic panels etc. These are at the moment the only EEE that do not fall under the scope of the new Directive.

Moreover, RoHS 2 provides for a transitional arrangement until 22 July 2019 for electrical and electronic equipment that was outside the scope of RoHS 1 and that is now in scope of RoHS 2 (Article 2(2) of RoHS 2). The transition period does not change the legal status of these products as non-compliant, e.g. for the substance restriction; it allows that products now in scope of RoHS 2 can still be placed and circulated on the EU market until 22 July 2019. The impact of this transitional period had not been assessed either.

Pursuant to Article 24(1) of the RoHS 2 Directive, the Commission shall examine the need to amend the scope of this Directive in respect of the EEE referred to in Article 2 of RoHS 2 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.

This initiative responds to the mandate of Article 24(1) of RoHS 2. After the adoption of RoHS 2, in the years 2012-2014, the Commission launched three studies (see section C) for a thorough scientific evaluation of the unassessed scope-related provisions in the final RoHS 2 text to analyse various options for scope adjustment. This initiative takes into account the outcome of the studies.

Other related existing policies have been considered within the assessment studies. This initiative is not part of the REFIT agenda. No recently adopted initiatives or other initiatives under preparation touch upon the same problems. The WEEE directive (2012/19/EU) scope is being assessed independently in parallel to this initiative.

### Issue

Three different types of scope related problems have been identified:

- Pipe organs problem – As a result of the opening of the scope, several atypical products with a minor (however integral) electrical function fall under the EEE definition and thus under the RoHS scope. This also affects the

non-electric parts of these products, as RoHS restrictions apply to the whole product, i.e. to both electrical and mechanical parts. All these products newly into RoHS scope will have to comply with RoHS restriction when placed on the Union market by the 22 July 2019, either by substituting restricted substances or by applying for temporary exemptions from restriction. However, unresolvable compliance problems were noted for pipe organs due to the required lead alloy for the organ pipes. The assessment shows that an exclusion from the scope via current Article 2(4) would solve the pipe organs industry's problem without any negative environmental, health or safety impacts.

- Secondary market problem – 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 (compliant at the time they are placed on the market) can benefit from this protection from retroactive measures. Article 2(2) was introduced in the context of the opening of the scope to provide for a transition period. It has however significant unintended retroactive side-effects. As a consequence of the current wording of Article 2(2) in conjunction with Article 4, non-compliant products that have been placed on the market between January 2013 and July 2019, have to be put off the market and cannot be resold or refurbished after 22 July 2019 (no secondary market operations would be possible). This “2019 hard stop” affects all products newly in scope, including non-compliant medical devices and monitoring and control instruments (EEE categories 8 and 9) that had been placed on the market before their specific Article 4(3) compliance date (22 July 2016 for in-vitro medical devices, 22 July 2017 for industrial monitoring and control instruments, 22 July 2014 for other medical devices and monitoring and control instruments).

- Spare parts problem – 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 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 environmentally desirable. However, Article 4(4) does not provide a spare parts provision after 22 July 2019 for the products newly in scope addressed in Article 2(2), other than medical devices and monitoring and control instruments. This means that products falling within this category, placed on the market lawfully before 22 July 2019, cannot be repaired with spare parts after that date.

The electrical and electronic equipment industry, including small- and medium-sized enterprises will benefit from all potential adjustments (less administrative burden, lower production and disposal costs, depending on the sector). Industry highlighted all three issues and expressed their support for the upcoming review various times.

Member States were involved in the first preparatory study and in the drafting of the RoHS 2 FAQs, where the consequences of the implementation of Article 2(2) are discussed in detail (http://ec.europa.eu/environment/waste/rohs_eee/pdf/faq.pdf, question 2.3).

**Subsidiarity check**

The legal basis of the RoHS directive and of this initiative is Article 114 of the Treaty on the Functioning of the European Union (TFEU). This initiative concerns a review of a Directive mandated by the Directive itself (see Article 24(1) of RoHS) and is therefore justified on the grounds of subsidiarity.

**Main policy objectives**

The general objectives are:

- the contribution to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE, through the restriction of the use of hazardous substances;
- the correct and regular functioning of the Union internal market in relation to electrical and electronic equipment products by preventing barriers to trade and competition distortion.

In this context, specific objectives of this initiative are those adaptations to the scope provisions in the RoHS Directive proven necessary by the results of the Commission impact assessment, i.e.:

- adjustments to Article 2(2), Article 4(3) and Article 4(4) to ease the secondary market operations, and
- exclusions from the scope of product groups with unresolvable compliance problems and negligible benefits from their inclusion into RoHS 2 scope.

These objectives are linked to the problems: repair and secondary market operation possibility and spare parts availability would ensure the correct functioning of the internal market for certain type of EEE that otherwise would be affected by the so-called aforementioned hard-stop. This hard-stop would provoke distortion in the second hand

operations (repair, reselling) for certain products already placed on the Union internal market. At the same time, prolonging products life cycle by ensuring repair, reselling operations would also enhance the environmental performance of the sector concerned in accordance with the objectives.

## B. Option Mapping

**Baseline scenario – no EU policy change**

The baseline scenario would be no change to the current RoHS scope. As described in the Issue section A, this would entail that from 22 July 2019 (deadline of Article 2(2)):

- no pipe organs could be placed on the Union market, and
- second hand and repair operations for products newly in scope should abruptly cease, including for products placed on the Union market few days before.

**Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation**

The main policy option aims at simplifying the existing RoHS directive by ensuring a more consistent approach in the scope, aligning compliance date for newly in-scope products with other EEE categories. This option will reduce burden to market operators and further ease second-hand and repair market operations; a sector with negligible relevance to RoHS objectives will be excluded from scope.

The following simplifications would solve the repair and second-hand market operations: the deletion of Article 2(2) in combination with the insertion of an analogue provision in article 4(3) covering products newly in scope other than medical devices and monitoring control instruments with a proper compliance date identical to the original transitional period of Article 2(2). In Article 4(4) a synchronised spare part provision should be added similarly to the other cases already given in the same Article 4(4). In addition, in consideration of the very limited changes in the organ construction in the last centuries, their limited turnover, the recycling of the pipes material and the negligible benefits from its inclusion in RoHS scope, the pipe organs sector is excluded from the RoHS directive scope. . Pipe organs are the only product group with unresolvable compliance problem for which neither environmental, nor social benefits are expected from the inclusion in RoHS II.

Thus, this option is articulated in three interventions as follows:

1. a comprehensive scope exclusion for pipe organs to be listed among the exclusions in Article 2(4),
2. the transformation of the Article 2(2) transitional period until 22 July 2019 for products newly in scope into a proper compliance requirement in Article 4(3) by the same date;
3. a new spare part provision for all products newly in scope other than those already covered in current Article (4), in order to allow the repair of products (placed on the Union market before the RoHS 2 requirements applied to its product category) with compatible spare parts.

Therefore, this initiative will firstly examine this main option (additional scope exclusion for pipe organs, modifications to the 2019 hard-stop as regards secondary market operations, and an additional spare part provision for products newly in scope) in comparison with the baseline scenario.

**Alternative policy approaches**

Other policy options that can be considered as alternatives to point 2 of previous section are:

4. an amendment of Article 2(2) to exclude only Category 8 and Category 9.
5. The incorporation of Article 2(2) into Article 4(3) with the 21.7.2017 as compliance date, allowing secondary market operations for non-conforming products newly placed on the market before 22 July 2017

No other policy options would achieve the same result of solving the problems of interventions targeted in points 1 and 3 of previous section since:

- for the sake of legal clarity and enforceability, any repair-as-produced provision needs to be fully aligned with the product compliance date. Any further discrimination between product groups newly in scope with regard to the timeline or the scope of this new provision would possibly distort the market and impede enforcement.
- no other subsectors that came into RoHS 2 scope (automatic doors/gates, combustion-engine powered garden equipment, complex air conditioning systems, fuse boxes, gas water heaters with electrical function, electric bicycles, furniture with secondary electrical functions, light switches, power wall sockets, power switches, safes, toys with secondary electrical functions, non-road mobile machineries currently in RoHS scope) represent product groups:
    - with unresolvable compliance problems that cannot be addressed by substance substitution or, where appropriate, by the RoHS temporary exemptions to restriction, and

- the inclusion of which into RoHS 2 scope brings negligible benefits[1].

Devices in other subsectors could become RoHS compliant either through the development of substitutes, or where this would require additional time (post 2019), by means of exemptions, until the reliability of possible alternatives could be proven. For example, exemptions have been requested for subsectors such as non-road mobile machineries (NRMM) and refurbishment of medical devices. For this reason, the exclusion of other subsectors from RoHS scope is not relevant to the objective of this initiative.

**Alternative policy instruments**

The problems arise from the current scope formulation and can be solved only through a targeted fine-tuning of the RoHS scope itself. This is consistent with the mandate of article 24(1) of RoHS 2.

**Alternative/differentiated scope**

The aforementioned option proposes to remove one niche sector which inclusion brings very limited benefits to the general objectives. Further sector exclusions only based on the size of enterprises would not be appropriate as it would not be beneficial to the general objectives described.

The proposed change enhancing second hand operations and spare parts is beneficial also to small enterprises.

**Options that take account of new technological developments**

Not applicable.

**Preliminary proportionality check**

The options considered, beside the baseline scenario, are a set of fine-tuning proposals that would fix the aforementioned problems, which have been already highlighted by industrial stakeholders, including SMEs. These problems are stemming from the current formulation of the RoHS directive scope provisions.

Thus, they are proportional to the need of ensuring a smooth single market functioning beyond 2019 also for repair with spare parts and secondary market operation of products newly in scope and to remove those niche sectors whose inclusion is not considered beneficial to the general objectives.

## C. Data Collection and Better Regulation Instruments

**Data collection**

Several studies are already available.

- Study by COWI for the Danish Ministry of the Environment of 2010, addressing selected aspects and product categories (none of the above mentioned) 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);
- 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://ec.europa.eu/environment/waste/rohs_eee/pdf/1.%20Biois%20study%20-%20RoHS_II_IA_Final%20Report.pdf);
- UK impact assessment study exploring some of these issues from an economic perspective; approved November 2012 (http://www.legislation.gov.uk/uksi/2012/3032/pdfs/uksifia_20123032_en.pdf);
- Study by Eunomia and Oeko-Institut for the European Commission, analysing various possible solutions to the problems identified by BioIS (2012); final report online since July 2014 (http://rohs.exemptions.oeko.info/fileadmin/user_upload/reports/201406012_RoHS_Scope_Review_report_final.pdf);
- A study by Eunomia and Oeko-Institut for the European Commission, analysing the impacts of RoHS on three different specific sectors; final report is online since March 2015 (http://rohs.exemptions.oeko.info/fileadmin/user_upload/reports/20150312_RoHS_scope_review_final_a.pdf).

The aforementioned studies form a good basis for the impact assessment and no further studies or data gathering are needed.

**Consultation approach**

In the course of aforementioned Commission studies, 12-week open online stakeholder consultations have been undertaken twice, once for the 2012 BioIS/ERA study and once for the 2014 Oeko study. A dedicated webpage has been launched to facilitate exchange of information for each project; inputs can be consulted at:

http://ec.europa.eu/environment/waste/rohs_eee/pdf/RoHS%20website%20documents.zip

[1] See published studies listed in section C

http://rohs.exemptions.oeko.info/index.php?id=127.

In addition, numerous workshops were organised with a participation of stakeholders who have been also consulted on a regular basis online and in writing. Stakeholders' input summary is given also within the reports. The undertaken consultations were exhaustive and no further consultations are needed for this initiative.

**Will an Implementation plan be established?**

☐ **Yes** **X No**

The option proposals are simple modification to the existing RoHS directive; the proposed scope review directive will only to need to be transposed by Member States and no further actions are needed. Since the proposed directive will amend a very limited number of legal obligations of an existing directive no implementation plan is required.

## D. Information on the Impact Assessment Process

- The Impact Assessment studies and related supporting stakeholders' consultation were undertaken in the years 2012 – 2015.
- The impact assessment steering group (ISG) was set up in 2Q 2013. Invitations were sent to the following DGs: Enterprise and Industry (ENTR), Employment, Social Affairs & Inclusion (EMPL), Internal Market and Services (MARKT), Economic and Financial Affairs (ECFIN), Legal Service (SJ), Secretariat-General (SG), Climate Action (CLIMA); in addition to the leading DG ENV, SG and DG GROW (former ENTR and MARKT) now actively participate.
- The consultants' studies, carried out also on the basis of extensive 12-week stakeholders' consultation are the basis for a comprehensive Commission impact assessment and a legislative proposal to introduce adjustments in the scope of the Directive in the first half of 2016, under the Article 24(1) mandate.

## E. Preliminary Assessment of Expected Impacts

**Likely economic impacts**

Positive for the main option proposal. Enhanced spare parts availability for repair and prolonging life of products would develop the second-hand market and after market operations for the whole EEE industry; benefits are expected also for consumers. Benefits are expected for the pipe organs sector from the exclusion from the RoHS scope.

**Likely social impacts**

Positive for the main option proposal, as enhanced spare parts availability for repair and prolonging life of products would develop the second-hand market and after market operations for the whole EEE industry, especially for increased employment in repair enterprises. Benefits are expected for the pipe organs sector from the exclusion from the RoHS scope.

**Likely environmental impacts**

Positive for the main option proposal: enhanced spare parts availability for repair and prolonging life of products already on the market would have an overall positive effect on the environment. Neutral for the exclusion of pipe organs sector from RoHS scope as its inclusion had no positive environmental effect.

**Likely impacts on simplification and/or administrative burden**

Positive for the main option proposal that is likely to result in a reduction of economic and administrative burden for repair and secondary-market industry. Positive for pipe organs sector for its exclusions from RoHS scope.

**Likely impacts on SMEs**

Positive for the main option proposal: the pipe organs sector and the repair/refurbishment of used products sector would benefit from the main option. Pipe organs and repair sectors are mainly made up by SMEs.

**Likely impacts on competitiveness and innovation**

Positive for the main option proposal for the sector in general due to an enhanced stability of the market functioning in the years following 2019. Clearer rules on repair and second hand operations would enhance the operators' confidence in longer term investing. Positive impact from the sector exclusion for the pipe organ sector that would not loose market shares.

**Likely impacts on public administrations**

Positive, lower costs for market surveillance by public authorities and a simple transposition of the new directive amending the RoHS scope; no other additional follow-up required.

**Likely impacts on third countries, international trade or investment**

Positive for the main option proposal, as, according to RoHS provisions, positive impacts would affect also import