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European Commission

CALL FOR EVIDENCE
FOR AN IMPACT ASSESSMENT

This document aims to inform the public and stakeholders on the Commission's future legislative work so they can provide feedback on the Commission's understanding of the problem and possible solutions, and give us any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	Review: Restriction of the use of hazardous substances in electronics
LEAD DG (RESPONSIBLE UNIT)	DG Environment Unit B.3 – From Waste to Resources
LIKELY TYPE OF INITIATIVE	Legislative proposal
INDICATIVE TIMETABLE	Q4-2022
ADDITIONAL INFORMATION	RoHS Directive (europa.eu) A European Green Deal | European Commission (europa.eu)

This document is for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described, including its timing, are subject to change.

A. Political context, problem definition and subsidiarity check

Political context

EU legislation restricting the use of hazardous substances in electrical and electronic equipment (EEE) has been in place since 2003, firstly through Directive 2002/95/EC, followed by the current Directive 2011/65/EU (RoHS Directive). The Directive, which currently restricts the use of 10 hazardous substances in EEE, complements Directive 2012/19/EU on Waste from Electrical and Electronic Equipment (WEEE) and addresses hazardous substances in EEE, in particular with regard to related waste management challenges and related workers' protection. By restricting the use of such substances, the Directive aims to enable cleaner material cycles and environmentally sound waste treatment of EEE, thus contributing to the circular economy and the protection of human health and the environment. It also aims to ensure the functioning of the EU market in a highly globalised sector, avoiding distortions of competition that might arise from differing product requirements. The Directive has inspired similar laws in around 50 other jurisdictions around the world.

This initiative is part of the Circular economy action plan (CEAP) and contributes to the Chemicals Strategy for Sustainability and to the Zero pollution action plan, key deliverables of the European Green Deal. Further to a review of the Directive's scope and related amendment in 2017, Article 24(2) of the Directive requires the Commission to carry out a general review of the Directive.

Problem the initiative aims to tackle

The assessment and consultations undertaken as part of the RoHS Directive's evaluation process indicated that the Directive contributes to reaching the objective of reducing the use of hazardous substances in EEE. As a result, the Directive has contributed to protecting the environment and human health and to the functioning of the internal market. However, the evaluation also identified a range of issues with the practical operation of the Directive and some systemic issues, pointing in particular to the high administrative burden and complexity of provisions and processes in place. These issues relate in particular to:

- Provisions and procedures on granting/renewing/revoking exemptions to substance restrictions, which are complex and have in part proved to be impracticable in their application:
  - overly complex rules on exemption validity;
  - issues arising from the application of criteria for exemptions (e.g. lack of criteria for weighing 'total negative impact' of substitution or substitution with critical raw materials);
  - deadlines and length of exemption process;
  - delays stemming from the need to transpose delegated acts for exemptions into Member State legislation;
  - issues of predictability for economic operators and overall high administrative burden.
- The process of reviewing the list of restricted substances:
  - insufficiently clear provisions on how the restriction process is triggered;
  - (further) substance restrictions in EEE, which could potentially be set under the RoHS (*lex specialis*), but

also under the REACH Regulation (nevertheless, there are differences in the two acts' objectives and in the criteria and mechanisms for deciding on substance restrictions).

- Enforcement difficulties, in particular in the context of e-commerce.

- Certain unclear and outdated provisions on spare parts or scope, and insufficient provisions to support the circular economy (e.g. for secondary resources).

- Consistency with related EU legislation covering substance assessment and restrictions (REACH Regulation) or legislation specific to EEE (Ecodesign Directive).

The problems identified mainly affected (albeit to different extents) economic operators, public authorities including the Commission, workers in the recycling sector and the public at large.

Basis for EU action (legal basis and subsidiarity check)

Legal basis

The legal basis of the RoHS Directive is Article 114 of the Treaty on the Functioning of the European Union. Article 24(2) of the Directive further requires the Commission to carry out a review of the Directive no later than 22 July 2021.

Practical need for EU action

The RoHS Directive addresses consumer goods of high economic relevance. Such goods are part of a cross-border market in continuous growth, relying on the free movement of goods. The environmental issues addressed also have cross-border effects (i.e. emissions of hazardous substances into the environment), while recycling markets function across borders. As a result, a harmonised approach in addressing them is crucial to avoid barriers to trade and distortion of competition in the EU and to establish a sustainable circular economy. The electronics sector is a priority sector identified under the Circular Economy Action Plan in light of circular economy challenges and potential.

The Directive is part of the new legislative framework for industrial products in the EU, i.e. it establishes procedures for assessing the conformity of EEE and sets, among other things, an obligation to affix the CE marking. Furthermore, due to the RoHS Directive's links to other EU legislation on the recovery and disposal of waste and areas of common interest such as human health protection, its objectives are better achieved at EU level. Therefore, there is clear practical need for EU action, as the Directive's objective to establish restrictions on the use of hazardous substances in EEE cannot be sufficiently achieved by action at Member State level.

This initiative is in line with principles of subsidiarity. The process of evaluating the Directive found that the legislation offers a significant degree of EU added value. In summary, the benefit of the RoHS Directive consisted in setting sound and scientifically supported requirements for the protection of the environment, human health and safety and for preserving the integrity of the EU market by limiting hazardous substances in EEE.

B. Objectives and policy options

The initiative's overall objective is to ensure that the RoHS Directive rules on the restriction of hazardous substances help protect human health and the environment, including the environmentally sound treatment of waste EEE, while ensuring harmonised application on the EU market. To address the problems identified, a range of possible measures will be considered, taking account of the objectives of the EU Green Deal, and in particular the Circular economy action plan, the Zero pollution action plan, the Chemicals Strategy for Sustainability and the Sustainable Products Initiative.

An initial non-exhaustive list of possible options to address the above objectives has been identified. For each option, various sub-options may also be considered. The options and sub-options are not mutually exclusive but can be combined. The options outlined below, which represent a mix of predominantly legislative and non-legislative (e.g. guidance) measures, are preliminary and may evolve with the analysis. All options will consider the objective of reducing unnecessary administrative burden.

- **Maintain the RoHS Directive as it stands and introduce certain non-legislative ('soft') measures**, such as an update of the RoHS FAQ document. This would include explaining the interaction with other legislation such as the REACH Regulation and the Ecodesign Directive.
- **Simplify and clarify the RoHS Directive by introducing and revising legislative ('hard') measures and soft measures** to: (i) clarify and improve the exemption criteria and process; (ii) clarify and improve the substance restrictions trigger, criteria and process; (iii) ensure coherence with other legislation, primarily REACH and Ecodesign; and (iv) improve implementation and enforcement.
  This option may consider:
  - **Reforming the exemption process**: revising/clarifying the criteria for exemptions; adapting

exemptions' validity; provisions on transition periods; clarifying the standard evaluation timelines and procedure; issuing a guidance document for the exemption procedure.
    - **Reforming the substance restriction provisions**, including timelines and procedure; clarifying links and potential overlaps with REACH and Ecodesign, etc. for EEE covered by RoHS; issuing a methodology/guidance document for the restrictions procedure.
    - **Entrusting the exemption and** substance restriction **assessments** to an existing **EU agency** (European Chemicals Agency (ECHA)).
    - **Reforming the provisions for spare parts.**
    - **Updating and clarifying the scope of the RoHS Directive.**
    - **Introducing provisions related to recycled material and critical raw materials.**
    - **Reforming the provisions on enforcement and market surveillance**, including by strengthening the link between the RoHS Directive and Regulation No 765/2008 (and Regulation 2019/1020 respectively), while possibly addressing e-commerce challenges and further guidance.
    - **Introducing/reviewing provisions** to ensure clear delineation between RoHS and other relevant legislation, including REACH and Ecodesign, and promoting guidance documents/common understanding papers, as necessary.

- **Transform the RoHS Directive into a regulation**, to simplify application and reduce unnecessary regulatory burden related to differing transposition in different Member States.

- **Repeal the RoHS Directive and incorporate its provisions into the REACH Regulation.**

- **Repeal the RoHS Directive and address product requirements related to the environmentally sound recovery and disposal of electrical and electronic waste under sustainable products legislation** (in the context of the Sustainable Products Initiative revising the Ecodesign Directive).

C. Likely impacts

Likely economic impacts

Some changes to the RoHS Directive, such as stricter criteria regarding exemptions to encourage more and faster substitution of restricted substances, may lead to increased initial costs for industry, including for SMEs, throughout the supply chains. The overall envisaged outcome of the review is simplification and regulatory burden reduction, which should reduce administrative costs for public authorities and economic operators without weakening the protection ensured by the Directive. In general, due to their limited resources, SMEs may need to outsource some actions and hence may experience greater impacts than larger companies. Voluntary substitution of chemicals identified for future possible restriction may also happen, promoting other (new) innovative and safer chemicals and increasing the competitive advantages for frontrunners and the need for investments and research. Thanks to the technological progress driven by the policy and regulatory framework, the EEE manufacturing industry as a whole may move towards safer and more sustainable products, while consumer confidence will further increase and there will be less negative impacts at the end-of-life stage of EEE. Furthermore, better control and safer use of chemicals in the workplace, including in EEE waste recycling plants, will reduce the risk of occupational diseases and premature retirement of workers, and reduce related health costs for society.

Depending on the options pursued, the review of the RoHS Directive may be expected to impact the future mandate and budget of ECHA.

Likely social impacts

The initiative will increase the protection of human health by reducing the exposure to hazardous chemicals, for the public in general, and in particular for workers and self-employed people in the recycling sector. The expectation is that job losses resulting from new legal requirements or increased costs for manufacturing EEE using restricted hazardous substances in the medium to long term would be compensated by growth in the production of products using alternatives to the restricted hazardous substances.

Likely environmental impacts

An improved regulatory framework for the restriction of hazardous substances in EEE will lead to more coherent and efficient restrictions. This would contribute to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE. Considering the Directive's broad product coverage scope, the safer use of chemicals covered by it will result in reduced releases of hazardous substances into the environment, thus reducing the costs of environmental remediation that not acting would entail. Environmental cross-border impacts are likely, as emissions of hazardous substances into the environment and recycling markets are transboundary.

Likely impacts on fundamental rights

The initiative will improve the protection of consumers and the environment, as enshrined in the Charter of Fundamental Rights of the European Union. No negative impact on fundamental rights is expected.

Likely impacts on simplification and/or administrative burden

The envisaged changes aim to maintain the harmonised application of the rules for hazardous substance restrictions in EEE, while reducing administrative costs and burden for Member States, economic operators and the Commission. Clearer definitions/rules and further harmonisation in a number of different aspects, such as reforming exemption and restrictions procedures, will also reduce the burden for companies and public administration.

Overall, the Directive's review would contribute to a simplified regulatory environment at EU level.

D. Better regulation instruments

Impact assessment

An impact assessment will be carried out to support the preparation of this initiative and to inform the Commission's decision-making. The impact assessment will look at all economic, social and environmental impacts, and will be accompanied by a support study. The Commission will in particular seek to gather information covering all Member States and where this is not possible develop a robust methodology for bridging data gaps.

Consultation strategy

As a minimum, the following consultation activities will be carried out:

- A public consultation, to be launched in Q1-2022, based on a questionnaire posted on the Commission's 'Have Your Say' website, will run for a minimum of 12 weeks. The online public consultation will be carried out in all EU official languages. A factual summary report will be published on 'Have Your Say' within 8 weeks after the closure of the consultation.

- A separate targeted consultation for key stakeholders in the form of questionnaire(s).

- Stakeholder meetings will be organised to: (i) present and discuss the main issues and options under consideration; and (ii) present and discuss the main draft conclusions of the impact assessment.

The results of the consultation will be summarised in a consultation synopsis report, which will be annexed to the impact assessment.

Why we are consulting?

The aim of the consultation is to enable all interested stakeholders, including members of the public, to provide evidence and give views on the best options to improve the RoHS Directive.

Target audience

The main stakeholder groups relevant for this initiative include: Member State authorities, business associations and companies including SMEs, non-governmental/civil society organisations, academia, individuals, workers associations and trade unions.