

**THE REVIEW OF DIRECTIVE 2002/95/EC  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
ON THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL  
AND ELECTRONIC EQUIPMENT  
INVITATION FOR COMMENTS ON TOPICS AND FOR INFORMATION SUPPLY**

## **THE DIRECTIVE**

Directive 2002/95/EC aims to approximate the laws of the Member States as regards the restriction of the use of hazardous substances in electrical and electronic equipment and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment. National laws or administrative measures can have a direct impact on the establishment and functioning of the internal market. Moreover Community-wide rules limiting the presence of hazardous substances in products and in production processes can benefit environment and health; restricting the use of these hazardous substances is likely to enhance the possibilities and economic profitability of recycling of waste from electrical and electronic equipment (WEEE) and decrease the negative health impact on workers in recycling plants.

## **INTRODUCTION: THE REVIEW**

Article 6 of the RoHS Directive calls on the Commission to review the measures provided for in the Directive taking into account, as necessary, new scientific evidence, in particular with regard to the inclusion of two additional categories of equipment in the scope (categories 8&9 : medical devices and monitoring and control instruments) and the adaptation of the list of restricted substances.

The RoHS Directive is also among the EU legal acts identified as presenting a simplification potential in the Commission Communication<sup>1</sup> of 25 October 2005 "A strategy for the simplification of the regulatory environment". The objective of the simplification exercise is to contribute to a European regulatory framework of the highest standards of law making respecting the principles of subsidiarity and proportionality. Simplification intends to make legislation at both Community and national level less burdensome, easier to apply and thereby more effective in achieving its goals. Reduction of administrative burden from existing EU legislation is an important political objective and the Commission is committed to assist in avoiding unnecessary burdens while preserving the level of environmental protection.

The review of the RoHS Directive will be based on the experience of the application of the Directive, the developments in science and technology, environmental requirements and the functioning of the internal market. It will also consider social and economic aspects.

It aims at increasing the environmental benefit, removing the implementation and enforcement problems encountered to date and making the Directive cost effective.

The examination of the issues started in 2006 and will continue during 2007 and 2008; a study on possible inclusion of categories 8&9 has been completed and further studies launched by the Commission services are ongoing.

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<sup>1</sup> [http://europa.eu.int/comm/enterprise/regulation/better\\_regulation/simplification.htm](http://europa.eu.int/comm/enterprise/regulation/better_regulation/simplification.htm)

**The Commission intends to present the review in 2008** (for more details on timing, please refer to section 2 below).

**Neither the fact that the review process is being launched, nor the content of the present document should be interpreted as a political or legal signal that the Commission intends to take a given action.**

## **STAKEHOLDER INVOLVEMENT IN THE REVIEW**

A transparent consultation process is an integral part of policy shaping, from the conception of the Commission proposal to the final adoption of a legislative measure and its implementation.

The success of the RoHS review depends largely on the participation of the stakeholders who are involved in the implementation of the Directive and have the information and experience which must be taken into account.

The European Commission is launching this process to encourage and allow stakeholders to provide their input. The review process consists of several steps and stakeholders will have the opportunity to contribute throughout this process at various occasions.

Updated information on foreseen structured consultations and on the progress of the review in general will be available in:

[http://ec.europa.eu/comm/environment/waste/weee\\_index.htm](http://ec.europa.eu/comm/environment/waste/weee_index.htm)

## **REQUEST FOR INFORMATION**

The Commission services have identified certain topics for the review. You will find below a non-exhaustive list of these possible topics to be addressed.

The Commission services will base their analysis of issues and selection of options for amendment on factual evidence.

**1. Please provide us with any detailed evidence that you currently hold that is relevant to our consideration of the identified topics.**

In particular, we would like to receive **studies and evaluations** which will allow us to analyse the full costs or benefits of provisions of the Directive and potential changes in the operation of the Directive.

For instance, when analysing a provision, we are likely to need to know the volume of products affected and trends in sales of those products, as any changes recommended by the review are likely to come into effect in around 2010.

We do not wish to receive position papers at this stage of the review process.

Note that we will be using relevant data which has already been provided as part of the WEEE Review, particularly information already received from stakeholders and contained in the summary document contained on this web-page.

[http://forum.europa.eu.int/Public/irc/env/weee\\_2008/home](http://forum.europa.eu.int/Public/irc/env/weee_2008/home)

**2. You are also invited to propose additional topics that you believe the review should consider or additional elements that you consider relevant within each topic. In this last case your contribution should clearly describe the problem that you believe needs to be solved, accompanied by supporting factual information.**

Please note that the information you provided may be shared with other stakeholders, in particular the contractors carrying out studies related to the RoHS review for the Commission services, unless you indicate that they should be considered confidential. Information provided in confidence (clearly indicated "CONFIDENTIAL") will not be made available to other parties.

***Addresses for submission of information:***

Please send information electronically to

[ENV-ROHS-DIRECTIVE-REVIEW@ec.europa.eu](mailto:ENV-ROHS-DIRECTIVE-REVIEW@ec.europa.eu)

Please send any paper copies of information which you do not hold electronically to:

European Commission  
Rue de la Loi 200  
1049 Brussels - BELGIUM

***We would like to receive the information by **May, 22<sup>nd</sup> 2007**, after which the Review will move on to the next stage of its work.***

## **1 POSSIBLE TOPICS OF THE REVIEW**

### **1.1 PRODUCT GROUPS TO BE INCLUDED [ARTICLE 6 OF ROHS]**

The current Directive text requires that the Commission presents proposals for including in the scope of this Directive equipment which falls under categories 8 and 9 set out in Annex IA to Directive 2002/96/EC (WEEE), i.e. medical devices and monitoring and control instruments. The inclusion of categories 8 and 9 will therefore be examined in the review and the Commission will present proposals for including medical devices and monitoring and control instruments in the scope of RoHS. A comprehensive study to investigate the inclusion of categories 8 and 9 has been carried out (see also in 2.1.1), which, along with any updated material, will be duly taken into account for formulating related proposals.

## 1.2 SUBSTANCES COVERED [ARTICLE 6 OF RoHS]

The Commission shall also study the need to adapt the list of substances of Article 4(1), on the basis of scientific facts and taking the precautionary principle into account. Particular attention shall be paid during the review to the impact on the environment and on human health of other hazardous substances and materials used in electrical and electronic equipment. The Commission shall examine the feasibility of replacing such substances and materials and shall present proposals to the European Parliament and to the Council in order to extend the scope of Article 4, as appropriate.

At the moment, no specific substances are under consideration.

In this context, the review will investigate inter alia:

- Other hazardous substances or materials used in electrical and electronic equipment
- How are they managed currently
- Possible substitutes and the sustainability (environmental, economic, social) characteristics of these other hazardous substances and possible substitutes.

## 1.3 TECHNICAL CHANGES TO THE SCOPE OF THE DIRECTIVE

### Relationship between WEEE and RoHS scope

For its scope, the RoHS Directive (Article 2) makes reference to the WEEE Directive. At the same time, the RoHS Directive is based on Article 95 of the Treaty (approximation of laws aiming at harmonisation of requirements for a smooth functioning of the common market) while WEEE on Article 175 (environmental protection, leaving more room for manoeuvre for the Member States to introduce more stringent protective measures such as, for example, add products in the national legislation implementing the obligations of the WEEE Directive). The review will examine whether the separation of the RoHS from the WEEE scope will prevent significant inconsistencies and administrative cost.

### Integration of some WEEE provisions related to scope

Since its entry into force, doubts have arisen as to whether some WEEE provisions are applicable to RoHS as well. On some issues, the Commission services have provided in the FAQ document ([http://ec.europa.eu/environment/waste/pdf/faq\\_weee.pdf](http://ec.europa.eu/environment/waste/pdf/faq_weee.pdf)) their interpretation but there may be further need for legal certainty.

### Spare parts

The RoHS Directive (Article 2(3)) does not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1 July 2006 in order to ensure the availability of spare parts for equipment placed on the

market before the entry into force of the substance restrictions and hence their reuse and refurbishment, leading to an extension of life-time.

Furthermore, the review will consider whether a "repair as produced" principle (i.e. ensure availability of spare parts for all products placed lawfully in the market), already established in the Directive, should be comprehensively implemented, without compromising the environmental objectives of the Directive. This would prevent products from reaching their end of life prematurely, for example when an exemption for a given application of a restricted substance expires or is removed.

#### **1.4 DEFINITIONS**

It would seem that clarification of certain concepts would facilitate practical implementation of the RoHS Directive; in particular the interpretation of "putting on the market" has given rise to several discussions; other definitions or concepts ("electrical and electronic equipment", spare parts) are very important for determining the scope of the Directive and may therefore have to be reviewed in connection with the scope.

The review will examine, inter alia

- Whether the current definitions (Article 3) of the Directive are adapted to its subject matter and objectives (proposals for modifications/removal/addition of definitions)
- How to best ensure coherence with other EU legislation, in particular in the area of waste and of EE products.

#### **1.5 FACILITATING IMPLEMENTATION**

##### Enforcement of the RoHS Directive

Enforcement authorities from the Member States and the Commission services have dedicated a lot of efforts for developing a common approach towards checking compliance of EE products with the RoHS Directive requirements. This is of paramount importance for a product-related Directive based on Article 95 of the Treaty: divergent national interpretations and practices concerning the implementation of the Directive would put at risk the functioning of the internal market. The EU trading partners also wish a harmonised approach in this respect and this is one of the reasons why intensive standardisation efforts in relation to the measurement of hazardous substances in EE are underway at international level. Moreover it is obvious that, for the achievement of the environmental objectives, effective enforcement plays a key role; efficient market surveillance would not only contribute to this but also to a level playing field for manufacturers and to avoiding trade/competition distortions.

A good understanding of the implementation of the Directive by the Member States and the producers (in the meaning of the RoHS definition) and of the benefits and problems in the implementation of the RoHS Directive (including observed/assumed levels of compliance, opportunities for harmonisation and improved enforcement; regulatory and management approaches worldwide) is necessary.

The review will examine, inter alia, the possibility of integrating a uniform mechanism for demonstrating compliance, including alternative mechanisms (on the basis of accomplished work) in order to minimise the risk of diverging interpretations and practices in the Member States. This examination will take place also in the light of the general EU regulatory policy for the marketing of products, ensuring cost-effectiveness and coherence with other EU product-related requirements.

Mechanism for exemptions : Exemptions from the general substitution requirement of the RoHS Directive are permitted if substitution is not possible from the scientific and technical point of view or if the negative environmental or health impacts caused by substitution are likely to outweigh the human and environmental benefits of the substitution or if it is not compatible with the health and safety of users of electrical and electronic equipment (EEE). Some stakeholders have expressed the view that the application of article 5 for granting exemptions (stakeholder consultation, scientific examination of new exemption requests by external consultants, Commission proposal and eventual vote in the technical adaptation committee) has created practical problems : delays perceived as too long by economic operators, limited validity of exemptions, legal cases, costs and administrative burdens, in some cases persisting uncertainty despite the complete handling of an exemption request.

The review will look into the procedure and criteria for granting exemptions with a view to examining the exemption requests in a quicker, more cost effective and comprehensive manner (including cost-benefit considerations and taking into account innovation, competition and intellectual property issues); it will also examine whether the development of indicators (such as the quantity of the hazardous substance involved in the given request) can contribute to even more transparent and balanced solutions.

## **2 THE REVIEW PROCESS**

### **THE DIFFERENT STEPS IN THE REVIEW PROCESS AND TIMING**

#### *2.1 Initial information gathering and ongoing studies*

The review will be based on the best and widest possible available information. Therefore the Commission services will be seeking information on a range of issues, from the stakeholders which have specific knowledge (public and private sector statistics, information on operations, costs, and benefits, scientific and technical information).

The first request for information is this document.

The Commission will also use information provided by a range of new research studies.

The studies directly relevant for the RoHS review are mentioned below.

Apart from these studies - to which stakeholders are encouraged to actively provide input and participate - there will be additional opportunities for stakeholders to provide valuable information for the next steps of the review process.

1. A comprehensive study in relationship to the inclusion of medical devices monitoring and control instruments has been carried out.

[http://ec.europa.eu/environment/waste/pdf/era\\_study\\_final\\_report.pdf](http://ec.europa.eu/environment/waste/pdf/era_study_final_report.pdf)

2. In the context of the WEEE Directive review, two studies are being executed

[http://ec.europa.eu/environment/waste/pdf/weee\\_review.pdf](http://ec.europa.eu/environment/waste/pdf/weee_review.pdf)

which are relevant for the RoHS review as well, in particular with regard to the scope, the definitions, the EE quantities and composition (content in hazardous substances and materials, including those not regulated by RoHS) as well as the structure of the EE markets and development of cost/prices.

3. An additional study, managed by the Directorate General Enterprise and Industry of the Commission, focusing on innovation and competitiveness aspects of the WEEE and RoHS review is underway. A description of the work of the project is available at

[http://ec.europa.eu/environment/waste/weee/pdf/tor\\_study\\_rohs-weee.pdf](http://ec.europa.eu/environment/waste/weee/pdf/tor_study_rohs-weee.pdf)

## *2.2 Additional data gathering and possible additional studies*

Depending on the information received and the progress of the ongoing studies, the Commission services will decide whether additional studies need to be launched for supporting the review.

When considering options for changes, the Commission services are very likely to require additional specific factual information and contact stakeholders to request assistance at a later stage.

**The information gathering exercise should to a large extent be finalised by early 2008.**

## *2.3 Stakeholder Consultation on options for amendments*

On the basis of the information it has received, the Commission will be considering options for amendments (where appropriate).

Before coming forward with proposals for revision of the Directive, the Commission will consult stakeholders on the options being considered. This public consultation is planned for 2008.

At that time, the Commission will be looking for comments from stakeholders on options, backed by supporting evidence that can be used to weigh up conflicting comments.

## *2.4 Impact Assessment*

The proposal for review will be based on a systematic assessment of potential impacts of policy options. The Impact Assessment (IA) will examine costs and benefits of different policy options for revision of the Directive, drawing on previously gathered information, and their comparative (dis)advantages. An Impact Assessment document will be produced, which will accompany the

proposal for revision. It should be noted that IA is an aid to political decision-making, not a substitute for it.

General information on impact assessment can be found:

[http://ec.europa.eu/governance/impact/docs/SEC2005\\_791\\_IA\\_guidelines\\_main.pdf](http://ec.europa.eu/governance/impact/docs/SEC2005_791_IA_guidelines_main.pdf)

More information on the impact assessment will be made available at [http://ec.europa.eu/comm/environment/waste/weee\\_index.htm](http://ec.europa.eu/comm/environment/waste/weee_index.htm).

## 2.5 *Proposal & legislative procedure*

As explained above, the RoHS review will be guided by current Article 6 of the Directive and the Commission's commitment to simplification.

The Commission, following analysis of the available information and options, and taking into account the experience of the application of the Directive, will submit, if appropriate, proposals for revision of the relevant provisions of the Directive to the European Parliament and Council.

**A legislative proposal, if appropriate, may be presented in 2008.**

The proposal will follow the co-decision procedure if modifications to the articles of the Directive are concerned. More information on the co-decision procedure and detailed information on the development and the content of the dossier can respectively be found at [http://ec.europa.eu/comm/codecision/index\\_en.htm](http://ec.europa.eu/comm/codecision/index_en.htm) and <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>.