

REQUEST FOR SERVICES – LIST OF TASKS FOR A STUDY ON RoHS AND WEEE DIRECTIVES

1. Introduction

The study is undertaken in the context of the Communication on “Strategy for the simplification of the regulatory environment”. The Communication identifies waste as one of the three priority policy areas for simplification and includes Directive 2002/96/EC¹ on waste electrical and electronic equipment (WEEE) and Directive 2002/95/EC² on the restriction on the use of certain hazardous substances in electrical and electronic equipment (RoHS) in the simplification exercise for 2008.

The objective of the simplification exercise is to contribute to a European regulatory framework of the highest standards in respect of the principle of subsidiarity and proportionality. Simplification intends to make legislation less burdensome, easier to apply and thereby more effective in achieving its goals.

The simplification exercise will scrutinise the current legislative approach with a view of replacing it by more efficient, less prescriptive, flexible and proportionate instruments (that may include framework directives, new approach directives, regulations and soft-regulation approaches) while maintaining the same level of environmental protection. Particular attention will be given to SMEs that suffer disproportionately from legislative and administrative burdens.

To provide the necessary information to the review, the Commission: 1) has carried out a research study into the implementation of the WEEE Directive by the Member States; 2) has launched a formal information gathering exercise to collect all readily available information relevant to the review, whether existing studies or data on implementation of WEEE, involving Member States, national collection schemes and industry; 3) has identified an external consultant to analyse the information gathered with a view to identifying data gaps; 3) is in the process of launching two further research studies analysing the impact and implementation of the WEEE Directive and potential changes (looking respectively at the costs and benefits of collection and treatment of different categories of WEEE, and the organisation, institutions and financing of the producer responsibility obligations); 4) will carry out an impact assessment in 2007 drawing on previously gathered information and analysis. Further information can be found at http://ec.europa.eu/environment/waste/wcee_index.htm.

This study will complement the above activities by looking at specific aspects of the WEEE Directive and by giving a thorough assessment of the RoHS Directive. Specific details are indicated below.

¹ OJ L 37 of 13.2.2003.

² OJ L 37 of 13.2.2003.

In carrying out this contract, the contractor will have the benefit of the information provided from the abovementioned sources and other existing readily available information sources.

2. RoHS Directive

The RoHS Directive provides for a ban of certain heavy metals and brominated flame retardants in electrical and electronic equipment. The ban applies to 8 of the 10 product categories defined in the Annex 1A of the WEEE Directive. The ban entered into force on 1 July 2006. The ban is general, but a number of application-specific exemptions to the ban are included in an Annex to the Directive. The Annex can be amended (extended/reduced) by the Commission via the procedure laid down in Council Decision 1999/468/EC³.

In general, there is evidence that the RoHS has forced industry to innovate and re-design products towards less environmental negative impacts. However, the practical implementation of the Directive faces some difficulties.

Firstly, the scope of the Directive (whose legal basis is Art. 95 of the Treaty) derives from the scope of the WEEE (whose legal basis is Art. 175 of the Treaty), which is not precisely defined. The Commission has discussed with the Technical Adaptation Committee (TAC) of the Directive a number of 'grey areas' products. In many cases, a harmonised interpretation has not been reached thereby leading to possible non harmonized interpretation of the scope of the Directive across Member States with potential implications for the functioning of the Internal Market.

Secondly, the criteria for granting exemptions are of difficult interpretation. Art. 5(1)b states that exemptions can be considered in the case where alternatives are scientifically and technically impracticable or where the negative environmental, health and consumer safety impacts of substitution outweigh the benefits. This has a twofold consequence: 1) the assessment of the practicability of substitution requires the establishment of boundary conditions that are rather subjective; 2) the absence of cost-benefit considerations may lead to decisions that are unbalanced compared to the objectives of the legislation.

Thirdly, the ban is general and applies to any type of application, including applications using a very small amount of hazardous substances. In these cases, the costs of enforcement and administration may, on the one hand, be disproportionate with respect to potential environmental benefits and, on the other hand, may increase the scope for free-riding. Furthermore, such a general ban may adversely affect innovation (see below).

In practice, the approach shows the following shortcomings:

- the number of exemptions is very high. The Commission has granted to date over 29 exemptions. The number of requests is not tailing off. This is causing a cumbersome workload to Commission services and the TAC, with consequent severe delays in the process;

³ OJ L 154 of 17.7.1999 as amended by Council Decision 2006/512/EC, OJ L 200 of 22.7.2006.

- some exemptions concern very small quantities of banned substance (for example, one exemption covers 0.01 Kg lead per year in the whole of the European Union). However, such exemption requests are subject to the same assessment procedure as for exemptions concerning larger quantities of banned substances;
- some exemptions concern very big quantities of banned substances, which reduce the Directive's potential positive impact on the environment. For example, the exemption granted to lead in CRT alone concerns a big part of all lead in EEE (excluding batteries).

Objectives

In this context, the study shall:

- carry out a thoroughly analysis of the impacts of the RoHS on the economy and the environment (main categories of impacts are discussed below).
- compare the RoHS approach with other approaches used outside of the EU (and specifically in China, Japan, South Korea, and in some US states) highlighting advantages and disadvantages.
- formulate proposals to revise the RoHS Directive with a view to improving its cost-effectiveness while maintaining the same level of environmental protection. The contractor will scrutinise the current legislative approach with a view of replacing it by more efficient, flexible, and proportionate instruments. The revision might involve:
 - refocusing the scope of the RoHS to the products or categories of products where there are clear net benefits and setting up a mechanism to bring new products into the scope of the ban to take into account of technological process;
 - setting a clear number of parameters to be fulfilled for the consideration of the exemptions. The parameters shall take into account static and dynamic efficiency considerations;
 - exploring the possibility of bringing the substance ban of the RoHS Directive under other EU legislation (such as the forthcoming REACH Regulation).

Content of the study

The study shall carry out the following tasks, taking into account of the issues discussed above.

1. Carry out a (static) cost-benefit analysis. The study shall assess the costs and benefits of the RoHS ban for each product category (focusing on main products within each category, when necessary). In assessing the costs and benefits it should take into account the full life cycle of the products. The assessment should consider the feasibility and costs of enforcement. It should consider social aspects when relevant (to the extent that this is possible and relevant).

2. Assess the impact on the Internal Market. The legal basis of the RoHS Directive is Art. 95 of the Treaty. The study shall assess whether and to what

extent differences in implementation (concerning, *inter alia*, the scope and the monitoring and enforcement procedures) are hindering the functioning of the Internal Market. The principles of the Directives based on New Approach and Global Approach should be taken into account when drawing proposals for improvement and simplification.

3. Assess the impact on innovation. The study shall assess whether and to what extent the RoHS ban may impact on innovation. *Inter alia*, the following mechanisms could be assessed: 1) the impossibility of using banned substances may prolong the time-to-market (thereby increasing the costs of innovation) or even retain companies from exploring new research avenues (even if substitution could become possible at the later stage); 2) innovative products may be discriminated against those mature products performing a similar function that have already been granted an exemption. Those dynamic inefficiencies should be weighted against the innovation push towards cleaner electric and electronic products provided by the RoHS ban. In this context, the study shall assess whether the granting of exemptions may hinder innovation as industry is not encouraged to further explore alternatives.

3. Assess the impact on products and sectors not covered by the ban. The study shall assess whether and to what extent certain product categories that are excluded from the ban (such as military equipment or transport equipment) are affected by the legislation.

4. Assess potential synergies and conflicts with other policy objectives. The study shall assess whether and to what extent the RoHS ban shows trade-offs or synergies with other policy objectives such as international trade integration (e.g. identifying cases where the RoHS has increased/reduced world trade integration) and energy efficiency (e.g. identifying cases where the RoHS ban has forced the adoption of less/more energy-efficient products).

3. The WEEE Directive

The WEEE Directives introduces producer responsibility⁴ and a system of collection, recycling and recovery targets (in what follows *'the requirements'*) for the management of waste from electric and electronic equipment. This set of requirements is applied to 10 product categories (Annex IA) with product lists for each category specified in Annex IB. The categories include a wide variety of products which are different with respect to (in what follows *'the factors'*):

- The environmental and economic characteristics of the product at the end-of-life (the environmental impact of the end-of-life product and its relative importance in the overall impact over the life-cycle of the product; the costs and feasibility of improving end-of-life management; the value of the product at the end-of-life).
- The structure of supply (the market and geographical concentration of manufacturers; their relationships with the supply chain and specifically the ability of the producer, in particular as defined in actual national legislations, to influence the design of the product).
- The structure of distribution (the number and geographical distribution of retailers and the relative bargaining power of retailers in the production chain)
- The structure of consumption (the time horizon of the product life-cycle; the number, geographical distribution and socio-economic characteristics of consumers)
- The stage of the product in innovation cycle (new vs. mature products)

Each of these factors influences the impact of the WEEE requirements on the environment and the economy.

Objectives

In the context described in Section 1, the study shall:

- Assess the categories of impacts of the WEEE requirements as detailed below from both an economic and environmental point of view (social issues should also be considered, to the possible extent). The impacts should be considered with respect to a no-WEEE scenario;
- Identify the factors and requirements that have a critical positive or negative impact for each category of impact;
- Compare the approach undertaken in the WEEE with respect to other approaches undertaken in the EU with respect to different waste streams (including end-of-life vehicles, batteries, packaging and packaging waste directives) and outside the EU (and specifically in China, Japan, the US)

⁴ Including: design responsibility (Art. 4), organizational responsibility for the waste management of EEE (Art 5(3), Art 6(1) and Art. 7(1)), financing responsibility (Art. 8 and 9), information responsibility (Art. 7(3), Art 10(1) and (2), Art. 11 and Art 12) and labelling responsibility (Art. 10(3) and Art 11(2)).

identifying advantages and disadvantages with respect to the categories of impact:

- Formulate proposals to revise the WEEE Directive with a view to improving its cost-effectiveness, while maintaining the same level of environmental protection, in relation to the categories of impact analyzed. The contractor will scrutinise the current legislative approach with a view of replacing it by more efficient, flexible, and proportionate instruments. In performing this task, the study will take into account of the outcome of previous three steps as well as of the results of the other studies and information gathering exercise being carried out by the Commission (relevant data and information will be provided by the Commission).

Content of the study

The studies shall assess the following categories of impact of the WEEE requirements for each product category, taking into account the factors discussed above.

Impacts on Innovation. The study shall assess the impacts (to date and potential) of the WEEE requirements on the pace of innovation. *Inter alia*, the study shall assess whether and to what extent the systems of producers' responsibility maintain producers incentives to improving design (Art 4) and estimate the share of R&D effort dedicated to fulfil WEEE requirements. It shall consider whether the systems of collective responsibility as implemented by Member States are discriminatory versus most innovative products and companies.

Impacts on Competition. The study shall assess the impacts (to date and potential) of the WEEE requirements on the fair competition both upstream (among EEE producers, their suppliers and distributors) and downstream (in the waste management industry). *Inter alia*, the study shall consider whether and to what extent: 1) the exchange of sensitive information among competitors participating in collective schemes may induce anti-competitive practices; 2) commercial relationship along the supply chain are altered thereby leading to limitation of competitions such as restricting the choice of suppliers, or inducing exclusive agreements; 3) the systems of producers' responsibility as implemented by Member States are discriminatory against SMEs, niche products and new entrants; 4) the systems of producers' responsibility as implemented by Member States are creating dominant positions in the waste management industry and assess the consequences on waste management costs; 5) free-riding lead to increases of financing liabilities for compliant companies.

Relationships with existing Directives and broader policy objectives. The study shall assess the synergies and trade-offs that the WEEE requirements have with respect to the legislation in place and broader policy objectives. In particular, the study shall assess whether conflicts, overlaps or duplications arise with respect to existing legislation⁵ and indicate potential complementarities to be exploited. The study shall consider the relationship with the following policies: 1) *External trade*,

⁵ Including Directive 2005/32/EC (EuP); Directive 96/61/EC (LPPC); Regulation (EC) No. 1013/2006 (Shipments of Waste), and the new Batteries Directive (in the text approved by the Conciliation Committee of 20 June 2006 ref. PE-CONS 3615/06)

The study shall assess the impacts of the WEEE Directive on global trade flow. In particular, the study shall assess whether and to what extent the regulation is inducing a segmentation of the global market, as major world markets start to be regulated in a different way. 2) *Health and consumer safety*. The study shall assess whether and to what extent potential conflicts with health and consumer safety product requirements may exist.

3.1. Methods to be used by the Consultant

The study shall focus on establishing a synthetic picture of the assessment rather than on details. This will include verifying and linking various data sources (including the data provided by the Commission) as well as completing existing information with own work.

Appropriate contacts with government actors and stakeholder should be foreseen.

Particular attention should be devoted to SMEs. The principle of ‘Think small first’ should be taken into due account.

The offer shall contain proposals for methodologies to address the above tasks. Further details shall be agreed on the basis of the workprogramme to be submitted as part of the inception report.

Geographical coverage

In principle, the geographical coverage shall be EU25. However, the consultants may choose to select a number of Member States to be studied in more depth wherever particular information seems to be available. Extrapolation to other countries shall be appropriately reasoned and their validity must be checked. The set of Member States should be selected taking into account of geographical conditions and typology of producers’ responsibility systems. The set (minimum 5) shall be proposed in the offer and agreed in the work plan to be submitted together with the inception report.

Product coverage

Similarly, the study should consider all products regulated by the two Directives. However, the consultant may select a representative sample of products to be studied in details. Criteria for selection should be indicated in the proposal and discussed with the Commission at the inception meeting.

Distribution of Task and Time Allocation

Offers shall indicate the distribution of tasks and time allocation between the various team members.

3.2. Reports and documents

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 5.4.

Work carried out by the contractor in performance of the contract will be subject of reports, four copies of which must be sent to the Commission.

Reports (in English) should be written in a clear and concise form. They will also be delivered to the Commission in electronic format (PDF, Excel and Word), such that they may be easily posted on a web site, on the basis of the following timeline:

- Before end of the first month following contract signing: Inception Report proposing detailed work programme to be agreed with the Commission.
- Before end of the fourth month following contract signing: Interim Report. The report shall indicate options for improvement and simplification of the two Directives, together with a basic analysis of their pros and cons.
- Before end of the ninth month following contract signing: Draft Final Report.
- At the latest four weeks after receipt of the comments by the European Commission: Final Report delivered in both Word 7 and pdf formats as well as 5 paper copies.

The Commission shall have 30 days to approve or reject this final report and the Contractor shall have 30 days to submit replacement documents or a new report.

3.3. Meetings

The following information is intended to help tenderers to estimate the maximum amount of expenses (only travel and subsistence and related costs are to be foreseen here)

The contractor shall participate, with a maximum of two participants, in a maximum of 4 meetings to be held in Brussels:

- Kick-off meeting no later than 2 weeks after the signature of the contract; the objective of this meeting shall be to discuss the planning of work and the methodology to be followed
- Meeting to present the Interim Report (around four months after signature of the contract)
- Other intermediary meeting, as necessary.
- Final meeting to present the Final Report.