

# Restriction of the use of certain hazardous substances in electrical and electronic equipment: scope of the Directive

2017/0013(COD) - 26/01/2017 - Legislative proposal

**PURPOSE:** to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment by the means of restriction on the use of hazardous substances in electrical and electronic equipment (EEE).

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** Directive 2011/65/EU (RoHS 2) sets out rules on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE). RoHS 2 is a recast of the earlier RoHS Directive 2002/95/EC (RoHS 1). Both RoHS directives have stimulated a reduction in hazardous materials all over the world.

The Commission has a mandate to examine the need to amend the Directive's scope in respect of the EEE definition and of additional exclusions of product groups covered by RoHS 2 by virtue of the open scope introduced with the 2011 recast.

The Commission has carried out this assessment and **identified a number of issues related to the scope of RoHS 2** that need to be addressed to avoid the legislation having unintended effects. In absence of a Commission proposal, the following problems would arise after 22 July 2019:

- the interdiction of secondary market operations (e.g. reselling, second-hand market) for new-in-scope EEE. This is known as the 'hard-stop';
- the stop of the possibility to repair with spare parts a subset of new-in-scope EEE once legally placed on the market before that date;
- the different (distorting) treatment of cord-connected non-road mobile machinery in comparison to otherwise identical machinery powered by a battery or an engine (currently excluded from RoHS scope);
- the de-facto prohibition of pipe organs placement on the EU market (as not RoHS-compliant due to the lead used to produce the wanted sound).

This proposal treats these four problems which could affect the EU market, manufacturers and citizens and trigger negative economic, environmental, social and cultural impacts.

**IMPACT ASSESSMENT:** the Commission's proposed measures would solve the four identified problems:

- **restoring the secondary market and increasing spare part availability** for certain EEE will have the following positive impacts: (i) a reduction of costs and administrative burden both for business, including SMEs, and for public authorities; (ii) positive economic impact in terms of additional market opportunities given to the repair industries and secondary selling; (iii) positive social impact,

including for EU hospitals, which would save about EUR 170 million after 2019, due to maintaining the possibility to resell and buy used medical devices; (iv) environmental benefits in terms of reduced overall waste generation;

- **the exclusion of pipe organs** from the Directive's scope will help avoid the loss of up to 90% of jobs in the sector and the annual loss of up to EUR 65 million by 2025;
- **the exclusion of non-road mobile machinery powered through a traction drive** from the Directive's scope will support industry development in the sector by removing distortion in the treatment of machinery.

**CONTENT:** the proposal seeks to amend Directive 2011/65/EU (RoHS 2). It tackles **scope problems** that cannot be resolved by either substance substitution or exemptions and guidance, e.g. for specific product groups with permanent compliance problem or where scope provisions generate market distortions.

The main elements of the proposal are as follows:

**Secondary market:** after 22 July 2019, both the first placing on the market and secondary market operations (e.g. reselling) of non-compliant EEE will be prohibited. EEE affected by this 'hard-stop' of secondary market operations are medical devices, monitoring and control instruments and other new-in-scope EEE. This barrier to secondary market operations is not consistent with the general harmonisation of EU product legislation.

For this reason, the Commission proposes to **remove the hardstop** of secondary market operations.

**Spare parts:** RoHS 2 creates an exception (to the general substance restriction) for cables and spare parts for the repair, reuse, updating of functionalities or upgrading of capacity of the groups of EEE gradually becoming subject its scope. However, newly-in-scope EEE other than medical devices and monitoring and control instruments are not listed.

The Commission therefore proposes to introduce a **specific provision to exclude spare parts from substance restriction**, so to allow the repair at any time of all EEE in RoHS 2 scope, which were placed on the EU market.

**Non road mobile machinery:** the proposal broadens the definition of non-road mobile machinery to include machinery powered by a cord-connected traction drive, in addition to similar machinery powered by an on-board power source. As a consequence, non-road mobile machinery powered through a traction drive will be excluded from the scope of RoHS 2.

**Pipe organs:** the Commission also proposes to add pipe organs to the list of excluded equipment due to the lack of alternatives for substitution.