

European Commission (Directorate-General Secretariat General, Directorate-General for Environment, Directorate B)
Attn: Mr Pascal LEARDINI, Mr Kestutis SADAUSKAS, Ms Sarah NELEN, Ms Bettina LORZ, Ms Karolina ZAZVORKOVA

Oeko-Institut
Attn: Mr Carl-Otto GENSCHE, Ms Yifaat BARON, Mr Otmar DEUBZER, Ms Katja MOCH, and Mr Christian CLEMM

Ecorys
Attn: Mr Carlo DELLA LIBERA, Ms Amélie GIRARD

31 October 2019

Subject: Comments on RoHS Substance Inventory (and related RoHS restriction methodology)

Dear authorities and experts involved in the development of a RoHS restriction methodology and Inventory,

Dear authorities and experts involved in the RoHS Review,

We write to you on behalf of several industry associations representing companies involved in different stages of the electronic and electrical equipment (EEE) supply chain, including producers and importers of substances, spare parts, a wide range of EEE, etc. and recycling. The signatory associations and their members are committed to the protection of health and the environment through the implementation of the RoHS Directive and other EU legislation. We are also committed to seeing such processes address the requirements of Article 6 of the RoHS Directive in a transparent and robust fashion.

Following the release of the latest Substance Inventory and final restriction methodology (both dated 26 September 2019) prepared by Oeko Institut, we remain very concerned. We are concerned about how the methodology was applied to produce the Inventory, since it prioritized in Group I chemicals which are not hazardous under CLP and/or not present in EEE. This alone, questions the adequacy of the methodology overall and/or the adequacy of its implementation to produce the Inventory and systematically assess the seven shortlisted substances.

We therefore request responses to the comments made in our letters dated 21 December 2018 and 10 May 2019, and in particular to those listed in Annex 1 below. Furthermore, we request that the restriction assessment under RoHS be discussed under the RoHS Review. We remain available for any questions or comments you may have, and look forward to hearing from you as soon as possible.

Sincerely,

- Roger Coelho, Policy Director, American Chamber of Commerce to the EU (AmCham EU)
- Paolo Falcioni, Director General, Home Appliance Europe (APPLiA)
- Kevin Bradley, Secretary General, International Bromine Council (BSEF)
- Maggie Saykali, Director Plastics Additives & Resins, European Chemical Industry Council (Cefic)
- Dr Simon Cook, Vice President – Global Regulation, Cobalt Institute
- Xavier Ibled, President, European Domestic Glass (EDG)
- Chris Slijkhuis, Board Member and Senior Advisor, European Electronics Recyclers Association (EERA)
- Thomas Hunlich, President, European Special Glass Association (ESGA)
- Geoffroy Tillieux, Director of the Technical Department, European Plastics Converters (EuPC)
- Emmanuel Katrakis, Secretary-General, Secretary General, European Recycling Industries' Confederation (EuRIC)
- Violaine Verougstraete, EHS Director, Non-Ferrous Metals Association (Eurometaux)
- Caroline Braibant, Secretary-General, International Antimony Association (i2a)
- Eva Model, General Manager, Minor Metals Trade Association (MMTA)
- Veronique Steukers, Director Health & Environment, Public Policy, Nickel Institute
- Leonor Garcia, Director Public Affairs, PlasticsEurope
- Meglena Mihova, Test & Measurement Coalition

Annex 1

Comments on the RoHS methodology and Substance Inventory

(Versions 26 September 2019)

1. The methodology is not addressed to any specific stakeholder involved the RoHS restriction process. The absence of a clearly defined target audience, and the Commission's own disclaimer, discredits the document. The methodology should be clearly addressed to authorities who are entitled to propose a restriction under RoHS (cf. Preface of ECHA Guidance for the preparation of an Annex XV dossier for REACH restrictions).
2. The methodology still refers to specific chemicals. Inappropriate references to specific examples remain in Table A-2 and A-3, despite our objections. They should be removed. Hypothetical substance names should be referenced instead; this is the only way to avoid stigmatizing chemicals that remain to be assessed.
3. The methodology still refers to chemicals used in EEE. References to 'used in EEE' remain in the final document and should be removed. Only substances present in EEE are covered by the scope of the legislation, and by extension to its related methodology and Inventory.
4. The methodology continues to disproportionately reference unreliable sources. The SIN List is not equivalent to the regulatory CoRAP list, yet is still referred to as such in the methodology. ChemSec has no equivalent legitimacy to that of EU Member States and Agencies. In composing their List, ChemSec performs a scientific review which is no more reliable, or relevant, than that performed by any other party. The ChemSec 'point of view' is referenced on a number of occasions, such as in their article 'Why DINP belongs on the SIN List' (21 September 2018) available on: <https://chemsec.org/why-dinp-belongs-on-the-sin-list/>. The SIN List should not constitute a source of information for the RoHS restriction methodology.
5. The methodology still omits the impact of a restriction on the end-of-life treatment and recycling of products. Waste sorting practices are influenced by, and sometimes defined around, specific chemicals contained in the waste which provide e.g. a given density on the basis of which waste can be sorted out and recycled safely, or a chemical affinity enabling to 'capture' certain chemicals for further processing. Substitutes that may appear to be safer, can in some cases prevent efficient sorting and recycling, which would be incompatible with circularity, resource efficiency and sustainability principles. The chemical affinity between certain substances, in particular metals, maximises the recycling potential and needs to be considered in any restriction assessment. Changes to the recycling feed may affect the efficiency of the recovery of certain metals which will be

‘carried and extracted’ by metals such as lead (Pb), or ‘trapped’ in non-recyclable (because indissociable) alloys or mixtures.

6. The compilation of the Substance Inventory lacks transparency and robustness. The outcome of the substance-specific priority pre-assessment, supposed to justify the addition and prioritization of each substance in the Inventory, is not available to stakeholders. Neither the sources, contents nor conclusions made on every criteria in the methodology for every listed substance are available for review. The content of the Inventory can therefore not be validated or discussed/completed as foreseen in the consultation. The Inventory is furthermore flawed as it prioritizes in Group I chemicals, which are not hazardous under CLP and/or not present in EEE. This means the methodology is misaligned with both the scope and purpose of the RoHS Directive itself.
7. The Substance Inventory includes chemicals not present in EEE. Once all relevant information has been collected to identify the actual substance that will be present in final EEE (as done for some of the seven shortlisted substances which still appear in the Inventory), the precursor or intermediate chemicals should be removed from the Inventory.
8. The nature and purpose of the ‘volume’ data to be reported in the Inventory are not clear. The current template requests EU production or import volumes. These do not necessarily match volumes present in EEE on the EU market, or volumes present in WEEE managed in the EU. Clarity is needed about how this volume information will be used in the prioritization pre-assessment and in subsequent phases of the restriction methodology.