Briefing
Initial Appraisal of a European Commission Impact Assessment

European Parliament

March 2017

Restriction of the use of certain hazardous substances in electrical and electronic equipment

Impact Assessment (SWD (2017) 23 final, SWD (2017) 22 final (summary)) of a Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (COM (2017) 38 final)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's impact assessment (IA) accompanying the above proposal, adopted on 26 January 2017 and referred to Parliament's Committee on Environment, Public Health and Food Safety. This proposal intends to amend the scope of Directive 2011/65/EU (RoHS 2), as well as to address issues experienced after its implementation. The proposal is pursuant to Article 24(1) of RoHS 2, mandating the Commission to examine (no later than 22 July 2014) the need to amend the scope of the directive.

RoHS 2 is a recast of Directive 2002/95/EC (RoHS 1), which lays down rules on the restriction of the use of certain hazardous substances[1] in electrical and electronic equipment (EEE), as defined in Article 3(1); these rules apply to EEE placed on the EU market regardless of whether the EEE are produced in the EU or in third countries which might export their products to the EU.

RoHS 2 includes three substantial changes[2] introduced by the Council and the Parliament to the Commission proposal for the recast of RoHS 1, namely:

1. Introduction of an 'open scope' through the newly added product category 'Other EEE not covered by any of the categories above' (Category 11), which made the directive applicable to all EEE.
2. Provision of a broader interpretation of EEE, resulting from a new definition of 'dependent' on electric currents or electromagnetic fields. Whereas, under RoHS 1, a piece of equipment was considered as EEE when it needed electricity for its primary function, under RoHS 2 Article 3(2), electricity is only needed for 'at least one intended function' for the equipment to be categorised as EEE. This implied that a potentially large number of product groups was either newly included or excluded under RoHS 2 compared to the Commission proposal.

[1] Under RoHS 2 (Annex II), six substances are currently restricted: Lead (Pb), Mercury (Hg), Cadmium (Cd), Hexavalent chromium (Cr(VI), Polybrominated biphenyls (PBB), and Polybrominated dyphenyl ethers (PBDE). The IA (footnote 1, p. 4), mentions that four additional substances will be restricted as from 22 July 2019: Bis(2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP), Dibutyl phthalate (DBP), and Diisobutyl phthalate (DIBP). However, there is no reference to the legal act establishing these additional restrictions.

[2] Two substantial changes were already included in the original Commission proposal for the recast of RoHS 1, namely:
1. extension of the original scope of RoHS 1 to cover 'medical devices', and 'monitoring and control instruments including industrial monitoring and control instruments' (Categories 8 and 9 of Annex 1, respectively);
2. introduction of new definitions, as set out in the 28-entry list of Article (3).

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3. Introduction of a transitional arrangement (until 22 July 2019) for EEE that was outside the scope of RoHS 1 (but within the scope of RoHS 2), in order to facilitate the phasing-in of the additional EEE resulting from the introduction of an open-scope ('**new-in-scope EEE**'). The transition period meant that EEE products new-in-scope might still have been placed and circulated on the EU market until 22 July 2019, even if not complying with RoHS 2 because containing restricted substances. At the end of the transition period, however, non-compliant EEE would have been prevented from further circulation on the EU market, thus making no longer possible the re-selling, refurbishment or secondary market operations concerning them.

The IA of the present initiative is mainly based on the results of three studies[3] commissioned to analyse the impact of the changes introduced by the co-legislators, as well as to provide potential solutions to three problems identified by stakeholders after the entry into force of RoHS 2, concerning:

1. non-road mobile machinery (NRMM) *without* an on-board power source;
2. windows and doors with electric functions;
3. refurbishment operations in the EEE sector.

Problem definition

The IA identifies four problems that cannot be solved by substance substitution, by granting exemptions, or by providing guidance (p. 6), namely:

1. secondary market operations for EEE which were not in the scope of RoHS 1;
2. spare parts for EEE which were not in the scope of RoHS 1;
3. pipe organs;
4. cord-connected NRMM.

Before analysing these four problems, the IA lists a series of new-in-scope 'product groups' or 'areas' which are not considered in need of being formally excluded from RoHS 2. This list is the result of *'considering the possibilities given by the exemption mechanism and guidance, as well as the IA studies'* (p. 6). However, further explanations would have been welcomed to understand clearly how these were identified; it is unclear from the IA whether the product groups listed on p. 6, together with those mentioned on p. 8 (spare parts, pipe organs, and cord-connected NRMM), represent the *exhaustive* list of all new-in-scope EEE brought about by RoHS 2. If this is not the case, the IA could have explained the methodology/criteria used for selecting them. Finally, the IA could have also explained the reasons behind some discrepancies between the product groups listed on pp. 6 and 8, and those analysed in the supporting IA studies (in terms of both the terminology and recommendations made by the contractors, and the terminology and conclusions included in the IA report). Differences in the terminology, perhaps unintended, could possibly have an impact in terms of the problems being identified and analysed in the IA. The analysis carried out in the supporting studies, in fact, seems to suggest a slightly different list of product groups than those listed on p. 6, which are those not considered in need of being formally excluded from RoHS 2. As an example regarding the terminology, the IA talks of 'Furniture with an integrated electrical function', whereas the BIOIS factsheet on furniture refers to 'furniture with secondary electrical functions' (p. 1). As an example regarding the recommendations, BIOIS concludes that 'Electric two-wheel vehicles which are not type-approved' should be excluded from the scope of RoHS 2 (Final Report, p. 59). Also, BIOIS concludes that it is impossible to assess in a meaningful way the impacts of RoHS 2 implementation on swimming pools (Factsheet on swimming pools, p. 12). The supporting studies mentioned above provide the elements needed to answer these aspects. It would

[3] BIO Intelligence Service (2011), Measures to be implemented and additional impact assessment with regard to scope changes, pursuant to the new RoHS Directive' (hereafter BIOIS), Final Report prepared in collaboration with ERA Technology for the European Commission, DG Environment.
Öko-Institut (2014), 'Additional Input to the Commission Impact Assessment for a Review of the Scope Provisions of the RoHS Directive Pursuant to Article 24(1)', Final Report prepared for the European Commission, DG Environment.
Öko-Institut (2015), Study for the analysis of impacts from RoHS2 on non-road mobile machinery without an on-board power source, on windows and doors with electric functions, and on the refurbishment of medical devices, Final Report prepared for the European Commission, DG Environment.

therefore have been helpful to include additional explanations in the IA, in order to avoid having to refer directly to the three supporting studies, as they are quite lengthy (about 600 pages).

As anticipated at the beginning of this section, the four problems identified in the IA are the following:

Problem 1: **secondary market operations for EEE that were not in the scope of RoHS 1**

EU product legislation, including RoHS 2, gives protection from retroactive measures.[4] As such, when there are legal requirements applying to a certain product from a specified date, and that product is placed on the market (i.e. made available *for the first time* on the Union market)[5] before that date, it may be made available along the delivery chain without additional considerations, even in case of revisions to the applicable legislation. Article 2(2) provides that a new-in-scope EEE may nevertheless continue to be made available on the market until 22 July 2019, without prejudice to the specific provisions established for medical devices, and monitoring and control instruments set out in Article 4(3). However, *only compliant products (at the time they are placed on the market) can benefit from this protection from retroactive measures.* This transitional period also sets an end date for all market operations for all new-in-scope EEE (including medical devices and monitoring and control instruments) that do not meet the RoHS 2 requirements. In this context, the transition period has significant unintended retroactive side effects. The consequence of the current wording of Articles 2(2) and 4(3) is that non-compliant products that have been placed on the market between January 2013 and July 2019 are not allowed any secondary market operations (such as re-selling of second-hand new-in-scope EEE) after 22 July 2019 (this is known as the 'hard-stop'). This would affect not only all new-in-scope EEE falling under category 11, but also non-compliant medical devices and monitoring and control instruments placed on the market before their specific compliance dates indicated in Article 4(3). Should the current legal constraint remain unchanged, non-compliant products that have been placed on the market between January 2013 and 21 July 2019 will not be able to be circulated after 22 July 2019, regardless of the age and functionality of a device.

Problem 2: spare parts for EEE that were not in the scope of RoHS 1

Another aspect of new-in-scope EEE compliance to RoHS 2 is related to its repairability. Article 4(4) RoHS 2 allows the use of non-compliant spare parts and cables for repairing, reusing, updating of functionalities or upgrading of capacity of EEE falling under the conditions of its sub-items (a) to (f). However, this article does not provide a spare parts provision for new-in-scope products other than medical devices and monitoring and control instruments. In other words, other new-in-scope products placed on the market lawfully until 21 July 2019 cannot be repaired unless spare parts are compliant with the requirements of the RoHS 2 directive. Concretely, this means that repair with non-compliant spare parts or cables is not allowed, either before or after 22 July 2019. As a result, should a malfunction occur that cannot be repaired with compliant parts, a device may reach its end-of-life before the average service life of a corresponding product.

Problem 3: **pipe organs**

Pipe organs use at least one electrical or electronic components and thus fall under the RoHS 2 scope, with full compliance requirements from 22 July 2019 for the whole product (pipes included). The vast majority of pipes are made of lead alloys; as there are no substitutes for the lead in organ pipes, and as lead is one of the substances restricted under RoHS 2, the use of lead is the key problem. Also, a pipe organ itself cannot be modified in such a way as to fulfil its intended function (IA, p. 11). Should the legal situation remain unchanged, pipe organs containing lead will be non-compliant products under RoHS 2 (due to a lack of possible substitutes for lead), and therefore it will be forbidden to place them on the EU market as from 22 July 2019.

Problem 4: **cord-connected NRMM**

According to Article 2(4)(g), NRMM is excluded from the scope of RoHS 2 when made available exclusively for professional use. According to the definition provided by Article 3(28), NRMM means *'machinery with an on-board power source....'.* As detailed in the ÖKO (2015) study, there are cases of equipment, especially that used in the

[4] The 'Blue Guide' on the implementation of EU product rules 2016, p. 20

[5] This is the definition included in RoHS 2 Article 3(12)

mining sector and in the cleaning industry, that is almost identical except for having an *external* power source. In light of Article 3(28), only these models fall within the scope of RoHS 2, those with an on-board power source being excluded. The current definition of NRMM would therefore lead, as from 22 July 2019, to a situation resulting in almost identical types of equipment being regulated in a different and inconsistent way.

Objectives of the legislative proposal

The IA presents two *general* objectives (pp. 13-14):

- to contribute to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE, through the restriction of the use of certain hazardous substances;
- the correct and regular functioning of the Union internal market in relation to EEE by preventing barriers to trade and competition distortion.

The IA presents four *specific* objectives (pp. 13-14):

- removing unnecessary barriers to secondary market operations, so as to promote a circular economy for the EEE sector in the Union;
- exclusions from the scope of product groups with unresolvable compliance problems and negligible benefits from their inclusion within RoHS 2 scope;
- preventing distortion in second-hand operations (repair, re-selling) for products already placed on the Union internal market;
- prevent inconsistent treatment of almost identical machinery placed on the Union internal market.

The IA presents five *operational* objectives (pp. 13-14):

- allow second hand operations for all EEE in scope;
- exclude pipe organs product group from the scope of RoHS 2;
- exclude from restriction spare parts for repair for all EEE;
- clarify the scope of RoHS 2, with adjustments to Article 2(2), Article 4(3), and Article 4(4);
- fine-tune the definition of NRMM in Article 3(28) to prevent unbalanced treatment of almost identical machineries.

The IA includes general, specific and operational objectives in the same table (p. 13). This does not seem to be in line with the Commission's better regulation toolbox which indicates that operational objectives are option-specific and should be set only after having identified the preferred option (tool no 13, pp. 80-81). However, this might simply be the result of a choice made for editorial reasons, as they are set according to the preferred options. On the whole, the objectives seem to be specific, measurable, achievable, relevant and time-bound (S.M.A.R.T), according to the recommendations set out under tool no 13, though not all of these features apply to all of them, as a result of their different nature. A more stringent and coherent terminology could have been used in describing some of the specific and operational objectives; in fact, the IA mentions at the same time *'secondary market operations'*, *'second hand operations'*, and *'second hand operations (repair, reselling)'* (p. 14), whereas the explanatory memorandum of the proposal clarifies that it addresses 'secondary market operations' (p. 3).

Range of options considered

The IA deals with four specific problems; as stated in the IA (p. 8), they are not directly linked with each other and therefore they can only be solved independently. This is the reason why available options, and their potential impacts, have been analysed individually.

For each problem, a different mix of options has been considered, with the baseline scenario referred to as option 1 (IA, p. 14). The table below provides an overview of the different policy options identified for each problem; the discarded options are marked in italics, while the preferred options are marked in bold.

1. Secondary market operations for EEE which were not in the scope of RoHS 1	
Option 1	Baseline.
Option 2	*Exclusion of medical devices and monitoring and control instruments from the scope of the Article 2(2) transition period, thus preventing specific negative impacts on resale and refurbishment of medical devices and monitoring and control instruments.*
Option 3	**Removal of the hard-stop to secondary market operations for all new, in-scope EEE, including medical devices and monitoring and control instruments: this entails the transformation of the transition period into a compliance phase in requirement for the placing on the market of new, in-scope EEE in Article 4(3).**
2. Spare parts for EEE which were not in the scope of RoHS 1	
Option 1	Baseline.
Option 2	**Introduction of a specific provision, which excludes from restriction the spare parts concerned, in order to allow the repair of pre-RoHS 2 EEE with pre-RoHS 2 spare parts.**
3. Pipe organs	
Option 1	Baseline.
Option 2	**Scope exclusion for pipe organs, thus removing them from the scope of RoHS 2.**
Option 3	*Issuing guidelines on applicable existing exclusions to pipe organs (e.g. large-scale fixed installations).*
Option 4	*Use of temporary RoHS 2 exemptions for pipe organs which remain in RoHS 2 scope.*
4. Cord-connected NRMM	
Option 1	Baseline.
Option 2	**A change in the NRMM definition so that the NRMM exclusion covers also external source powered machinery models fitted with a traction drive.**

(Source: author's reworking of IA text)

While option 2 for the secondary market problem (p. 15), and options 3 and 4 for the pipe organs problem (p. 16) were quickly discarded without *detailed* explanations, the text provided in the IA appears to be sufficient to understand the decision taken without the need to refer to the supporting studies; these are, however, useful for understanding why some of the options were chosen by the Commission for consideration in the first place[6].

Scope of the impact assessment

The IA assess, in a balanced way, the economic, environmental and social impacts of the retained options for each of the four identified problems. A quantification of the economic impact of the baseline scenario for two of the four identified problems (pipe organs and NRMM) is provided. The IA list a series of aspects that have severely affected the quantification of impacts for the remaining two problems (p. 17). In addition, the IA provides a quantification of the economic impact for the manufacturing of products; this is, however, essentially related to the 22 July 2019 compliance date, rather than to the 'secondary market operations' problem (p. 19). Additional quantitative data, including a thorough analysis of the impacts for the four identified problems, can be found in the three supporting IA studies.

Concerning the quantification of the impacts for the retained options, quantitative data are provided, although their availability is not evenly distributed across the four identified problems, due to the difficulties in gathering them (as pointed out several times in the supporting studies). Within each dimension (environmental, economic and social impacts), there is a core set of common aspects that are considered across the four problems, namely: internal market, manufacturers' competitiveness, costs and administrative burden, employment, consumers, health. Two additional aspects are analysed for the 'pipe organs' problem, i.e. innovation and research, and culture. The aspect of innovation and research is mentioned also for the 'spare parts' problem (p. 24), but then it is missing from the analysis carried out on page 25.

In general, the analysis of impacts would have been clearer if the different aspects considered had been *consistently* grouped under a separate heading, corresponding to the three *key impacts* analysed (environmental, economic, and social). This is not the case. On page 25, for instance, the description of the environmental impacts

[6] In this regard, see, for instance, ÖKO (2015) for option 2 concerning the secondary market problem.

is followed by the analysis of impacts on the internal market, manufacturers' competitiveness, and costs and administrative burdens (falling under the economic impact), followed by three other dimensions belonging to the social impact. Such an approach would have also enabled faster comparisons of the three key impacts across the four identified problems, which is the approach chosen in the IA when comparing the options (pp. 30-34).

Subsidiarity / proportionality

The IA and the explanatory memorandum of the proposal indicate that the legal basis of the Commission proposal (and the legal basis of RoHS 2) is Article 114 TFEU,[7] and that only a solution at EU level can solve the problems addressed by the proposal. This is because the provisions regarding the restriction of the use of hazardous substances in EEE placed on the EU market have a direct impact on the EU single market, and cannot be drawn up at Member State level without leading to distortion. The IA mentions the same argument (p. 13). The deadline for the submission of reasoned opinions by national parliaments on whether the proposal complies with the principle of subsidiarity was 29 March 2017.[8] The IA does not contain a specific section on proportionality; however, stakeholders (including SMEs) favoured the retained options, that were considered to achieve the result of solving the issues identified without going beyond what was needed, meeting the general and specific objectives (IA, p. 24, p. 27 and p. 29).

Budgetary or public finance implications

The explanatory memorandum indicates that the proposal would have no impact on the EU budget or on the public finances of Member States (p. 7). This is also mentioned in the IA as regards pipe organs and for NRMM; the IA also adds that the exclusion of pipe organs from the scope of RoHS 2 and the change in the definition of NRMM will entail a reduction of costs and administrative burden (p. 33 and p. 35, respectively).

SME test / Competitiveness

The IA deals with four specific problems that are not directly linked with each other; this is the reason why it describes the impact of the baseline scenario on SMEs separately for each of the identified problems. The IA does not provide a specific section dealing with the impact on SMEs; the economic impact on SMEs, including some quantitative analysis, is considered for the secondary market and pipe organs problems. Regarding the spare parts and NRMM problems, the IA mentions that specialised repair business is typically undertaken by SMEs, and that most manufacturers of cleaning machinery are SMEs: both sectors will be affected by the current RoHS 2 provisions. For the NRMM problem, some data are included in the ÖKO (2015) study (pp. 5-36). Disproportionate administrative costs for SMEs are mentioned (e.g. for SMEs working in the EEE refurbishment sector), but not quantified. For pipe organs, although no additional costs or burden would be incurred by pipe organ builders should pipe organs fall under the scope of RoHS 2, the total loss of annual turnover in the EU would be € 350-400 million (p. 27). The IA does not analyse the impact on SMEs of the different options because all of them, apart from the preferred ones, are discarded, and the IA argues that those retained will avoid entirely the negative impacts on SMEs.

Competitiveness is mentioned explicitly only for the pipe organs and spare parts problems. For pipe organs, the IA mentions that around seven organs are being imported into the EU per year, mainly from Switzerland; however, even by banning imports due to RoHS 2 scope inclusion, no significant differences between the baseline and the retained option scenarios are expected (p. 27). For spare parts, the IA mentions that the preferred option would result in 'reduced cost of compliance to repair non-compliant products' (p. 25). Competitiveness is not explicitly mentioned for the NRMM problem; however, the IA concludes that the exclusion of the cord-connected machinery models would bring relevant economic benefit to the cleaning and mining machinery sector, which are

[7] It is worth noting that while Article 114 TFEU is linked to one of the two general objectives of the proposal, nothing is said about the other objective, i.e. the contribution to the protection of human health and the environment, considered under Articles 168 (Public Health), and 191 (Environment) TFEU.

[8] At the time of writing no reasoned opinions had been submitted by national parliaments, though scrutiny was completed by the parliaments of two Member States, and in progress in the parliaments of seven Member States (Source: IPEX database).

mostly made up of SMEs, due to avoided costs of compliance and of research and development (pp. 29-30). Apart from what has been highlighted, the analysis of competitiveness of SMEs, as well as for the manufacturers of the product groups affected by the potential scope change, does not appear to be sufficiently developed or explained.

Simplification and other regulatory implications

The proposal aims to restore the full coherence of RoHS 2 with the EU's general principles of product legislation, by addressing secondary market operations (such as the re-selling of EEE, which may also involve the repair, refurbishment and reuse, and replacement of spare parts) which are currently not allowed for all EEE (explanatory memorandum, p. 3). The changes proposed by the proposal do not alter the consistency with other pieces of legislation, such as Regulation (EC) No 1907/2006 (REACH), Directive 2012/19/EU (WEEE), and Directive 2000/53/EC (ELV), the first dealing with chemicals, the other two dealing with waste (explanatory memorandum, pp. 4-5, and IA p. 6). The proposal is not part of the REFIT agenda;[9] however, according to Article 24(2) of RoHS 2, *'No later than 22 July 2021 the Commission shall carry out a general review of this Directive, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal'*.

Quality of data, research and analysis

The identified problems, and their analysis, are based on extensive research conducted by external contractors, though the main body of the text of the IA report itself contains little supporting evidence when assessing the impact of the retained options. More data and analysis are provided in Annexes 4 and 5, as well in the supporting studies (see above), whose contribution is acknowledged throughout the IA. They provide ample and detailed insights and analysis on the different issues considered in the IA, making the overall analysis, and the assessments of the retained options, reasonably sound. However, the difficulties faced in gathering the data needed and sometimes even the complete lack of data, are acknowledged throughout these studies. Overall, the IA would have gained in clarity and thoroughness had the reader found in the main text more complete information explaining the Commission's rationale and choices, rather than being obliged to consult the supporting studies.

Stakeholder consultation

The IA identifies the stakeholders affected by the problems and by the proposed solutions; the Commission consulted a broad range of stakeholders and gathered their views through three open, 12-week, stakeholder consultations and through four stakeholder meetings (pp. 38-45).[10] Around three hundred stakeholders registered on the dedicated public consultations websites. However, all together, only about 13 % participated in the public consultations or the meetings, with the majority of respondents representing business and public authorities. Even though this number was low, the Commission found very satisfactory the quality of the answers provided, and these did feed into the analysis (p. 38). However, not all suggestions were considered in the IA. In this regard, BIOIS observes that one of the results of the second stakeholder consultation was to point out that the main problems encountered in complying with the RoHS concentration limits (set out in RoHS 2, Annex II) were related to the analysis of very thin coatings as well as passivation coatings (pp. 13-14). However, the IA lacks any analysis concerning this issue.

Monitoring and evaluation

Monitoring and ex-post evaluation of the proposed measures are, according to the Commission, neither necessary nor technically feasible. These measures intend to solve the corresponding underlying problems through a change of legal status. No gradual implementation steps are envisaged, and Member States will only need to transpose the legal text adopted into their national legislation on a one-to-one basis (IA, p. 35). As a result, there are no monitoring or evaluation requirements in the new proposal.

[9] RoHS 2 is one of the pieces of legislation considered for the fitness check on the most relevant chemicals legislation (excluding REACH), as well as related aspects of legislation applied to downstream industries currently being carried out by the Commission's DG GROW.

[10] The RoHS 2 section of DG Environment's website contains the stakeholders' consultation documents.

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) adopted a positive opinion on a draft version of the IA report of 25 May 2016, recommending to improve the IA by providing, where possible:

1. additional details and quantitative data on the likely impacts of the different options;
2. more information regarding the discarded policy options and, where appropriate, including them as alternative options to be impact assessed even if they only partially address the problem;
3. more details concerning the stakeholder consultation process and the respective views of the most relevant stakeholders.

Finally, the RSB recommended introducing (and assessing) only one baseline scenario, and using it as reference point for the analysis, therefore amending accordingly the tables provided under section 5 for the comparison of the options. The final version of the IA seems to have addressed the RSB's recommendations, and this corresponds to the explanations provided in Annex 1, Table 6 (pp. 36-37).

Coherence between the Commission's legislative proposal and the IA

The legislative proposal is aligned to the recommendations set out in the IA, as represented by the amendments of Articles 2, 3(28) and 4. There is, however, an exception represented by the *inclusion of an additional amendment* regarding Article 5(5), concerning the provision fixing a timeframe for the Commission to decide on applications for renewing exemptions. The explanatory memorandum clarifies the reasons for doing this (p. 4). The IA mentions that time-limited exemptions from substance restrictions can be granted for specific applications when the conditions spelled out in Article 5(1), regarding the adaptation of Annexes III and IV to scientific and technical progress, are met. However, it makes no mention of Article 5(5), which is the additional article whose amendment is proposed. As such, it is only by reading the two separate pieces of information that it is possible to get a clear understanding of the rationale underlying this additional amendment.

Conclusions

The IA defines in a clear way the problems and the objectives of the proposed initiative, and is based on extensive research conducted by external contractors. However, it omits to explain the sequential process and the underlying assumptions leading to the identification of the four problems analysed, mentioning only the supporting studies. Also, it contains some discrepancies with respect to the supporting studies in terms of terminology and recommendations which are not explained in the IA. A broad range of stakeholders provided valuable data and information that were used in the IA, even though only 40 (out of 300) provided comments and suggestions. The IA seems to make a reasonable case for the preferred options, which are reflected in the legislative proposal, intending to amend four articles of RoHS 2. However, one of these amendments has been proposed without a clear explanation being provided in the IA. The analysis of competitiveness of SMEs appears to be, in general, insufficiently developed or explained.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Environment, Public Health and Food Safety (ENVI), analyses whether the principal criteria laid down in the Commission's own better regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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