ORGALIME

The Director General

Mr. Hans-Christian Eberl
Chairman RoHS2 WG
DG Environment
European Commission
B – 1049 Brussels

Brussels, 14 September 2012

Directive 2011/65/EU (RoHS2): Consultation on Draft Guidance Document (draft FAQs)

Dear Chairman,
dear Mr. Eberl,

Orgalime thanks you for being consulted on the draft FAQ Guidance Document of 15 June 2012. European manufacturers of Electrical and Electronic Equipment appreciate the general commitment and efforts made by the Working Group to establish a guidance document for this highly complex Directive with a view to securing a harmonised application of the Directive in the Member States.

However, notwithstanding some improvements in comparison to earlier versions, we regret to have to inform you that overall European manufacturers of electrical and electronic equipment are disappointed with the draft FAQ Guidance Document that is currently subject to stakeholder consultation. Fundamentally this is because we feel that a significant number of flaws and misunderstandings, which existed in earlier versions of this document, are still there today. You will find our detailed comments on this in the attachment to this letter.

We are in particular concerned with the suggested guidance and interpretation of many issues related to the scope, as well as proposed interpretations regarding the application of the New Legislative Framework (NLF) to the Directive: in our view the proposed guidance departs too much and too often from both the letter and the spirit of the Directive and the common understanding of the NLF.

In addition, several general aspects outlined in the draft FAQs appear to us as not being in line with the Directive or with the Commission's role as Guardian of the Treaty, in particular given that this Directive aims to provide fully harmonised EU product legislation.

Consequently, Orgalime doubts that the draft FAQ Guidance Document, in its present form, will provide sufficient added value in terms of resolution of the open questions and overall fitness for purpose as guidance to manufacturers of electrical and electronic equipment in applying the Recast RoHS Directive.

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Our common understanding as the electrical and electronics industry of Europe is summarised in attached updated version of the Orgalime Guide on the RoHS2 Directive of 13 September 2012. We submit it to you as additional Orgalime input to this consultation.

We hope that attached comments and the content of this updated Orgalime Guide will be taken into account in the announced possible revision of the current draft FAQ Guidance Document before the entry into force of the Directive on 3 January 2013, with a view to achieving reliable, high quality guidance that closes the gap in understanding certain provisions of the Directive in accordance with its legal text and the letter and the spirit of the recast Directive, thereby more effectively helping manufacturers in their preparations for complying with the RoHS2 Directive.

We thank you in advance and remain available for any further information that you may wish to obtain.

Yours sincerely,

Adrian Harris
(*electronically signed*)

Cc: DG Environment: Mrs Blanco, Mr Garcia-Burgues, Mr Langendorff

DG Enterprise: Mr Cozigou, Mr Pettinelli, Mrs Brykman, Mr Leoz-Arguelles, Mr Girao, Mr Ingels, Mrs Ekroth-Manssila, Mrs Weidel, Mrs Stefanescu, Mr Spiechowicz

Mr Nicol, Rapporteur of the RoHS2 FAQ Working Group, BIS - Green Economy Team, UK

ANNEX: INCONSISTENCIES, FLAWS AND MISUNDERSTANDINGS OF THE DRAFT FAQs OF 15.06.2012, WHICH REQUIRE REVISION

1. GENERAL

1.1. Questions 1.3 (footnote 4), 1.8, 2.3 (footnote 8) and 5.6 (footnote 12) allow diverging national transpositions despite RoHS2 being a fully harmonised Directive

In above mentioned entries, DG Environment accepts that Member States have different interpretations and applications of the existing RoHS Directive (RoHS1), although RoHS2 represents fully harmonised European product legislation.
In addition, the draft FAQs direct readers to national authorities in case of questions on RoHS2, while the draft FAQs are established at European level. This is in our view undermining the Commission's role of acting as the Guardian of the EU Treaty, besides bearing the risk of hampering the free movement of goods in the internal market.

We ask the Commission to secure the nature of the fully harmonised RoHS2 Directive in any guidance document to be provided at EU level.

1.2. Question 1.5 concerning the relationship of RoHS and REACH is unbalanced

The draft FAQs insufficiently stress that Electrical and Electronic Equipment falls in the scope of both the RoHS2 Directive and the REACH Regulation and that for that reason, the RoHS2 Directive requires coherence and maximising synergies between the two legal instruments (see recital 16 RoHS2), notably with respect to the application of the new substance restriction methodology and subsequent revision of RoHS 2's Annex II.

In particular, article 6 RoHS2 requires that "*the review and amendment of the list of restricted substances in Annex II shall be coherent with other legislation related to chemicals, in particular Regulation (EC) No 1907/2006, and shall take into account, inter alia, Annexes XIV and XVII to that Regulation. The review shall use publicly available knowledge obtained from the application of such legislation.*"
Therefore, RoHS2 and REACH are "*complementary*" to each other (as confirmed by recital 16 RoHS2), not applying in parallel, as the draft FAQs suggest.

The statement that "...*in principle there should be no overlaps, as restrictions of the specific use of substances in EEE should not be addressed by REACH*" overlooks that specific substance restrictions, that also apply on EEE, already exist under the REACH Regulation today. Besides, the REACH candidate list and subsequent annex XIV list of substances subject to REACH authorisation is discussed to be extended (also to substances that are restricted under RoHS2), and the REACH risk assessment committee has recently provided its opinion on four classified phthalates (DEHP, DBP, BBP, and DIBP) in articles[1], thereby studying the same substances as are in the focus of the RoHS2 Directive.

Consequently, there is an ever increasing need for coordination and coherence between REACH and RoHS2 to avoid a duplication of legislation and unnecessary bureaucracy, which is not reflected in the draft FAQs today.

Orgalime does not see the immediate need to include this question in the draft FAQs at this stage and suggests removing it. At least, it should be substantially reworded.

[1] On 15 June 2012, the Committee for Risk Assessment (RAC) has adopted by consensus its opinion concluding that the proposed restriction of four classified phthalates (DEHP, DBP, BBP, and DIBP) in articles is not justified.

1.3 Questions 4.4, 4.5 and 4.6 contain a general misconception of RoHS 2

Directive 2011/65/EU restricts the use of certain hazardous substances in electrical and electronic equipment, but does not restrict the different uses of EEE as such, as intimated in the suggested answers to these questions.

2. SCOPE RELATED CONCERNS

2.1. Question 1.2 provides an incomplete summary of the scope changes introduced by the recast

The general introduction on the issue of "scope" does not mention the explicit codification of a set of scope exclusions, notably those introduced by the new article 2.4, such as the granted exclusions for large-scale stationary industrial tools and large-scale fixed installations, means of transport, non-road mobile machinery for professional use or certain photovoltaic panels and R&D equipment.

Announcing the obligation of "*Full compliance of all EEE by 22.07.2019*" risks confusion, too, as the newly introduced scope exclusions apply beyond this date.

Also, the meanwhile finalised BioIS Impact Assessment study to review the need to amend the scope/scope exclusions of the Recast RoHS Directive before 2014, as required by Article 24 RoHS2, is not reflected in the suggested answer to this question.

Question 1.2 should therefore take up these missing points and thereby also provide the necessary coherence with the suggested answer to question 1.3, which correctly refers to the extension to all EEE as of 23 July 2019 "except for the ones explicitly excluded".

2.2. Questions 1.3, 2.1, 2.2 and 2.3 interpret Article.2.2 RoHS2 while DG Environment's Scope Impact Assessment identifies the need for revising this provision

We understand that in particular questions Q1.3, Q2.1, Q2.2 and Q2.3 are aiming to further explain scope related issues of RoHS2 based on the existing legal text of the Directive as currently in force.

However, BioIS has carried out a RoHS2 Scope Impact Assessment Study on behalf of DG Environment, which already identifies the need to revisit article 2.2 of the RoHS2 Directive and on which the Commission is currently examining options for the way forward**.**

Therefore, we believe that a mere reference to the wording of Art.2.2 in its present form would be of limited added value in a FAQ guidance document, as it would not reflect the full state of play of discussions on the issue, and as any possible amendment of article 2.2 in the near future would change the current situation and suggested understanding.

In order to avoid a misleading reference to Article 2 in the FAQs, we suggest to

- *EITHER add a reference to the final BioIS impact assessment study, its findings and recommendations for the way forward to the suggested entries; or*
- *ALTERNATIVELY, to remove the detailed interpretation of article 2.2 RoHS2 from the draft FAQs and replace it with a statement that this article is currently under examination following the BioIS Scope Impact Assessment Study.*

2.3. Question 1.6 regarding batteries is ambiguous and/or incomplete

The Batteries Directive represents a "lex specialis" for these very products and therefore batteries do not fall in the scope of RoHS. This has been correctly spelled out in the existing guidance document on RoHS1, which reads as follows:

"The Battery Directive and the RoHS Directive have similar substance restrictions. The RoHS Directives restricts the use of heavy metals, such as mercury and cadmium, in electrical and electronic equipment, but does not apply to batteries."

This wording should be added as a conclusion to question 1.6.

2.4. Question 3.1 introduces arbitrary interpretation criteria for scope exclusions, which are not consistent with the spirit of the Directive and especially not with the alignment of RoHS2 with the NLF

Criteria of physical size in terms of a precise figure of size, weight or volume cannot be derived from the legal definitions of any scope/scope exclusions provided for in RoHS2. Instead of arbitrarily chosen interpretation criteria, any RoHS2 guidance document needs to understand the given scope exclusions in its entirety, without singling out individual terms, such as "large-scale".

Orgalime supports the second option given in the draft FAQs for interpreting the scope exclusions LSFI/LSSIT, namely the criterion of complexity and interdependence of the equipment/components/machines in question. This approach should be extended (see Orgalime Guide on RoHS2, chapters 1.3.4 and 1.3.5).

2.5. Chapter 5 (questions 5.1 to 5.6) spells out inconsistent interpretations for cables

The main conceptual errors that we see in this chapter are the following:

- Question 5.1 states that: "*Cables are within the scope of RoHS2 if they meet the definitions of EEE in Article 3(1) OR of cables in Article 3(5)*", and further indicates that most types of cables will meet both of these definitions.
  This proposed understanding is in our view incorrect: if cables were to anyway meet the definition of EEE, what would have been the reason for having a specific definition for "cables" in RoHS2? In our view, cables are in scope if they meet the definition of cables given in article 3.5. The definition of "cables" therefore specifies the definition of "EEE" for these products, notably regarding the relevant voltage range.
  This conceptual error is present throughout chapter 5 and creating a particular inconsistent interpretation for cables in the voltage range above 250V but below 1000V. On the basis of the suggested understanding, such cables could be argued to be in scope, but could equally be argued to be out of scope.
- Chapter 5 suggests an inconsistent classification of cables into the different product categories of annex I and thereby contradicts the initial Commission declaration issued at the occasion of the adoption of the Directive. However, as cables meeting the definition of article 3.5 are new in scope, they represent category 11 equipment.
  Note: Wiring that is contained within or integral to EEE, does not meet the definition of "cables" given in article 3.5. Instead, such wiring is part of the EEE and must therefore meet the material restrictions and timescale that apply to the EEE itself.
- Contradictions of chapter 5 with other sections of the draft FAQs, such as contradiction of question 5.4 with 8.2 (optical cables).

Orgalime suggests rewording chapter 5 accordingly.
In particular, the chapter should clearly spell out the following:

- *Cables are within the scope of RoHS 2 if they meet the definition of "cables" given in Article 3.5.*

- *Cables as defined in article 3.5 fall under Category 11, and the substance restrictions and the DoC/CE marking requirements therefore apply from 22 July 2019.*
- *Wiring that is contained within or integral to EEE, does not meet the definition of "cables" given in article 3.5. Instead, such wiring is part of the EEE and must therefore meet the material restrictions and timescale that apply to the EEE itself.*
- *As clarified in its Declaration of 25 May 2011, the Commission is of the view that "electrical and electronic equipment which was outside the scope of Directive 2002/95/EC, but which would be covered by the new Directive does not need to comply with the requirements of this Directive during a transitional period of eight years". Those EEE includes among others: "cables mentioned in Article 4 and the related definition in Article 3(5)".*
- *The example of fibre-cables should be deleted from Question 5.4*

2.6. Question 6.1: the suggested argumentation on consumables is confusing

Consumables are out of scope due to the fact that they do not meet the definition of EEE as provided for in article 3.1 complemented by 3.2.

The statement "*consumables with an equipment constituent meeting the definition of EEE....are EEE and in the scope"* is misleading. Either a consumable is a consumable, or the equipment is "EEE" as it meets the definition of EEE. In the latter case it is not a consumable. Identifying a consumable being an EEE is confusing in itself.

We suggest rewording the entry accordingly.

2.7. Question 7.2 introduces an arbitrarily chosen scope criterion for "weather balloons" and creates inconsistencies with the given argumentation for the case of "wardrobe and light"

Similarly to the issue of the suggested criterion of a specific physical size, weight or volume for LSFI under question 3.2, providing metric or spatial dimension elements to define whether a product is excluded or not, such as the stratosphere criterion for weather balloons, risks being arbitrary as it cannot be derived from the legal text of RoHS2.

Weather balloons are latex balloons filled with helium or hydrogen. EEE are normally attached by a cord to the balloon for many reasons (measuring temperature, taking photos, etc.).
The EEE may fall into the RoHS scope (unless subject to an exclusion), not the balloon as such. Most probably the instruments were already falling into the scope of the RoHS Directive (most in category 9). Each instrument has to be re-conducted to its own category.

Therefore, the example of weather balloons equals the example of wardrobe with light, as given in question 8.1. The conclusions on being in or out, are however, opposite. Such an inconsistent approach without consistent application of the draft FAQs own interpretation criteria weakens the reliability of the draft FAQs, as for the same case once the product is suggested to be in the scope, once it is suggested to be out of the scope.

2.8. Question 7.3 on "how to decide which category of EEE a product falls in" is confusing and underestimating practical consequences

Orgalime believes that any equipment new in scope should fall under the new scope category 11 for the sake of clarity in legal obligations, requirements (substance restrictions and CE marking obligations) and deadlines to apply.
In any case, any product newly in scope benefits from the transitional period of Article 2(2).This includes any product new in scope falling in any of the 11 categories of Annex I.

Otherwise, confusion in the market place is imminent, in particular as the draft FAQs continues to accept diverging national scope interpretations!

2.9. Question 7.6 regarding the interpretation of electric boards creates confusion with the understanding of components

An electric board is part of an electric installation. This can also be a large scale fixed installation. Therefore, it is not obvious that electric boards should be within the scope of RoHS2.

Graphic cards cannot be finished EEE, as they cannot work on their own without being put into a computer. They can be viewed as spare parts under RoHS2, however, if made available on their own.

The example of electric boards should be adjusted or deleted.

2.10. Question 7.9 on packaging requires clarification

We share the conclusion of packaging being outside of the scope of RoHS2. However, the suggested reasoning is, at least, incomplete.
Packaging is not in scope of RoHS2 as packaging does not meet the definition of "electrical and electronic equipment" provided for in article 3.1 of the RoHS2 Directive.

We suggest adding this reasoning.

2.11. Chapter 8 on scope misses to introduce and clarify important general scope concepts (notably the continuation of the category approach and the concept of "functional unit")

Orgalime suggests the following introduction/new Q&A to chapter 8:

- According to article 2.1, RoHS2 applies to EEE falling within the **categories** set out in annex I. Recital 3, art. 2.1, art. 5.2, annex I and entry 29 of annex III of RoHS2 confirm the continuation of the "category approach" of the Directive following the recast.

- The initial categories 1-10 of the Directive were established at the level of **equipment** that represents **a functional unit in itself**, e.g.: a dishwasher, however, not its individual components or parts (including its internal wiring). (See Frequently Asked Questions on Directives 2002/95/EC and 2002/96/EC of May 2005, page 6, concerning "finished product" and "direct function" definitions and components interpretation).

- The recast has extended this systematic to further EEE through the introduction of a **new scope category 11** titled "*other EEE not covered by any of the categories above"* (so-called "open scope"). In other words: The Directive's approach of addressing equipment that represents a functional unit in itself has been extended to this new category 11.
  This is explicitly supported by recital 3: "*Directive 2002/95/EC provides that the Commission shall review the provisions of that Directive, in particular, in order to include in its scope equipment which falls within certain categories and to study the need to adapt the list of restricted substances on the basis of scientific progress, taking into account the precautionary principle, as endorsed by Council Resolution of 4 December 2000."*

- **Article 3.1 defines "EEE"** as "*equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1 000 volts for alternating current and 1 500 volts for direct current*".

  Article 3.2 RoHS2 states that "*for the purposes of point 1, 'dependent' means, with regard to EEE, needing electric currents or electromagnetic fields to fulfil at least one intended function*":

- **Article 3(27) of the recast RoHS Directive** defines a "spare part" as "*a separate part of an EEE that can replace a part of an EEE. The EEE cannot function as intended without that part of the EEE. The functionality of EEE is restored or is upgraded when the part is replaced by a spare part*." This means implicitly that "equipment" can only be a unit with a function in itself, but not only a (spare) part or component, which by Art. 3.27 is something below the level of "equipment".

- **Recital 12** states that the "**intended functions**" are to be determined on the basis of objective characteristics, such as the design of the product and its marketing, meaning that "ex-post" criteria (such as the physical size, weight or volume of an installation the EEE is determined for) that can be verified only after the placing on the market of the equipment in question, are not suitable for determining the scope.

- **Any EEE newly included in scope benefits from an 8 years transition period:** The Commission has clarified in its Declaration to the adopted Recast Directive that article 2.2 means "*that electrical and electronic equipment which was outside the scope of Directive 2002/95/EC, but which would be covered by the new Directive does not need to comply with the requirements of this Directive during a transitional period of eight years*".

- RoHS2 recognises the following cases of **equipment not in scope** and/or **Non-EEE**:

    - **Equipment which does not meet the definition of article 3.1 complemented by article 3.2,** thus:
        a) Equipment, which does not depend on electric current and electromagnetic fields to work properly, and equipment which is not for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1500 volts for direct current.
        b) Any other product that does not depend on electric current and electromagnetic fields to work properly (e.g.: textiles, furniture)

    - **Equipment and their applications on which the Directive does not apply according to article 2.4 ("scope exclusions")**
        a) equipment which is necessary for the protection of the essential interests of the security of Member States, including arms, munitions and war material intended for specifically military purposes;
        b) equipment designed to be sent into space;
        c) equipment which is specifically designed, and is to be installed, as part of another type of equipment that is excluded or does not fall within the scope of this Directive, which can fulfil its function only if it is part of that equipment, and which can be replaced only by the same specifically designed equipment;
        d) large-scale stationary industrial tools;
        e) large-scale fixed installations;
        f) means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved;
        g) non-road mobile machinery made available exclusively for professional use;
        h) active implantable medical devices;
        i) photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location to produce energy from solar light for public, commercial, industrial and residential applications;
        j) equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

2.12. Questions 8.1 and 8.2 isolate the term "dependent" from its wider context, while it should complement the definition of "electrical and electronic equipment"

The draft FAQs apply the definition of "dependent" in isolation from other parts of the definition of "EEE".
However, Recital 12 of RoHS2 clearly states that the definition of "dependent" is to "*complement*" the definition of EEE, and therefore not supposed to overrule or go beyond the definition of "EEE", which would result from considering the term "dependent" the only relevant criterion for assessing whether or not an equipment represent an EEE under RoHS2.
Instead, all scope provisions and all criteria of the definition of "EEE" given in Article 2.1 need in our view to be assessed in order for the manufacturer to conclude if his equipment represents an EEE under RoHS2 or not.
This also includes an assessment of the notion if the equipment is dependent "*in order to work properly*".

Question 8.1 conflicts with the Recast RoHS Directive. RoHS follows a category approach addressing equipment that represents a functional unit in itself (see article 2.1, 5.2, annex I, recitals 3, 12 and 27, entry 29 of annex III). This approach is extended to any further equipment through the introduction of a new scope category 11 titled "*other EEE not covered by any of the categories above"* (so-called "open scope").

Question 8.2 departs from the legal text of RoHS2 by stating that "dependent" relates to at least one function", while the RoHS2 Directive defines dependent as follows: "*for the purposes of point 1, **'dependent'** means, with regard to EEE, needing electric currents or electromagnetic fields to fulfil at least one intended function*".
Question 8.2 also erroneously interprets the definition of "EEE" as it requires currents and fields to pass through the part of an EEE, which conflicts with the category and functional unit concepts of RoHS2.

We suggest revisiting these entries accordingly.

2.13. Question 8.3 requires components to comply with RoHS2 requirements and suggests inconsistent wording

Components do not fall in the scope of the Recast as they do not meet the definition of "EEE" and do not require CE marking or a Declaration of Conformity.

Thus, the relevant level for compliance assessment is the level of "equipment that represents a functional unit". Stating that "*components have to comply with RoHS2*", as is the case in question 8.3/sentence3, is incorrect and in itself conflicting with the previous sentences of this question.

However, the Directive's approach of addressing material contents and restrictions of material use in a given finished product indirectly implies that its parts (material, components, sub-assemblies) need to meet the substance restrictions of the Directive, unless an exemption applies that is listed in Annexes III and IV of the Directive or in finally adopted and published amendments to it. CE marking for components and parts is not required.

We suggest modifying these entries accordingly.

2.14. Question 9.6 regarding subassemblies is inconsistent

While we agree with the first paragraph of this entry, we question the appropriateness of the given examples in the second paragraph, since computer network interface cards or graphic cards to our understanding cannot work on their own without being part of the assembly.

Therefore, paragraph 1 should read as follows:

"Sub-assemblies made available that are only intended to be assembled into EEE by the manufacturer or used as spare parts are not EEE and therefore do not need to be separately CE marked or need a DoC, such as computer network interface cards or graphics cards".
Paragraph 2 should be deleted.

3. INCONSISTENCIES RELATED TO THE APPLICATION OF THE NEW LEGISLATIVE FRAMEWORK (NLF)

3.1. Throughout the draft FAQs terms and terminologies are used that do not exist or tie in with the NLF and existing guidance derived from it:

The NLF and RoHS2 Directive provide clear definitions of the different "*economic operators*" -, namely: "*the manufacturer, the authorised representative, the importer and the distributor*". Neither the NLF nor the RoHS2 Directive use the terms "*user*" or "*assembler*", while the draft FAQs do so and thereby create confusion.

3.2. Consequently, legal obligations and responsibilities of different market operators are erroneously dispelled in the draft FAQs, and in particular in questions 3.1, 3.3 and 4.6:

The draft FAQs build upon inconsistencies and follow concepts not derived from the New Legislative Framework (NLF). However, the Recast has been aligned with the NLF which implies that its concepts should apply for the Recast in its entirety and for the legal responsibilities of economic operators in particular.

Besides, the NLF establishes clear requirements on the different economic operators, which includes manufacturers' compliance obligations (see article 13.3 RoHS2, which reads that "*By drawing up the EU Declaration of Conformity, the manufacturer shall assume responsibility for the compliance of the EEE with this Directive*") and distributors' verification obligations following article 10 RoHS. Nowhere in the legal text of RoHS2 are the compliance responsibilities of the manufacturer extended to any other economic operators, neither the installer nor the assembler, nor the user, as indicated in the LSFI/LSSIT questions of the draft FAQ.[2]

Instead of ex post criteria, question 3.1 should therefore be built on EX ANTE criteria that are applicable to the manufacturer of EEE (see entry 2.4 of this document).

Annex VI.3 RoHS2 includes a reference to "installer" in the bracket expression, as this entry has been copied from the model wording of Decision 768/2008, where it is relevant for Directives that include specific obligations for installers. The RoHS2 Directive does not include such specific obligations.

[2] The legal text of the RoHS2 Directive does not provide grounds for the shifting of compliance responsibilities from the manufacturer/importer of EEE to either the installer or the assembler or the user of "installations". Our view that the substance restrictions and CE marking obligations established by RoHS2 arise for manufacturers and importers of EEE, however not for any other economic operators, is supported by the following arguments:

- The requirements to comply with the RoHS2 Directive's substance restrictions and CE marking obligations are established in articles 4 and 15, which regulate the "*placing on the market*" of EEE. Thereby, the obligations of articles 4 and 15 are addressed to manufacturers/importers alone.
- The RoHS2 Directive does not contain the notion "*made available and/or putting into service",* neither in articles 4 nor 15, nor elsewhere. This is rightly so, as the substance content of an EEE can only be determined at the very first step of its design and manufacture, and it is clear that "design and manufacture" are different from "installing/putting into service".
- Subsequent actors in the supply chain therefore bear responsibilities of verifying technical documentation and the presence of the CE marking on the EEE/apparatus that are IN the scope of RoHS2. However, they have rightly not been given responsibilities on the substance content of an EEE/apparatus that has already been designed, manufactured and placed on the market before the EEE was supplied to them.

However, if he is also the final distributor in the Business-to-Business supply chain, an "installer" bears verification obligations of article 10 RoHS2.

These clarifications should be added to the draft FAQs.

In addition, it should be clarified that RoHS2 restricts the use of certain hazardous substances in EEE, however not the uses of EEE per se, as question 4.6 seems to promote as a concept when requiring economic operators only to sell EEE for the uses outside the scope of RoHS2. It is the manufacturer's obligation to determine whether or not a given product falls in the scope or not, subsequent actors in the supply chain bear verification requirements.

3.3. General questions on NLF in Chapter 9 (i.e.: questions 9.1, 9.2 and 9.9)

As regards questions of general meaning and dealing with horizontal NLF issues, we believe they should not be clarified individually in guides for specific directives, such as in these draft RoHS2 FAQs. Horizontal questions require a horizontal solution to ensure harmonised interpretation and thus must be dealt with in a revised version of the Blue Guide, which is currently under way.

These suggested questions should therefore be removed from the draft FAQs.

On the other hand, important issues relevant for RoHS2 are not clarified in the draft FAQs, such as the question if the DoC needs to accompany the EEE.

For this question, we suggest adding the following reply:
Article 7 RoHS2 requires the manufacturer to "draw up" the declaration of conformity. Directives which require the DoC to accompany the product, state this requirement clearly in the legal text. RoHS2 does not include such a requirement.
Thus, the distributor is not requested to hold the Declaration of Conformity, but should facilitate the task of market surveillance authorities in acquiring it from the manufacturer.

3.4. Question 9.13 on CE marking is ambiguous and/or incomplete

Products falling in the scope of RoHS2 and placed on the market before 2nd January 2013 may already bear the CE marking due to falling within the scope of other EU Directives or Regulations than RoHS2.
Therefore, the current wording of the suggested answer to question 9.13 is confusing.

We suggest that it should be modified to distinguish between:

- *CE-marked EEE in scope and placed on the market before 2 January 2013, and*
- *CE-marked EEE in scope and placed on the market after 2 January 2013.*