

## RoHS II and WEEE II

# CECE's concerns regarding the scope and application of RoHS II and WEEE II

### I. Introduction

During the recast of the WEEE Directive and the RoHS Directive, the scope of both legal acts has been considerably widened. New exclusions of the scope were defined in order to avoid the inclusion of products for which the application of the directives would not be appropriate because of their use patterns, waste stream etc. The exclusion for non-road mobile machinery (NRMM) in both directives is of great importance to the industry represented by CECE, as is the exclusion of large-scale stationary industrial tools, large-scale fixed installations and equipment specifically designed for these excluded products.

However, some concerns remain – they are partly linked to the legal text of the RoHS Directive 2011/65/EU (RoHS II) and the WEEE Directive 2012/19/EU (WEEE II) respectively and partly linked to the European Commission's FAQ for RoHS II and WEEE II.

### II. Concern regarding the scope exclusion for NRMM

RoHS II and WEEE II exclude non-road mobile machinery from their respective scope (article 2 No. 4(g) of RoHS II and article 2 No. 3(e) of WEEE II). CECE fully supports this exclusion. However, the definition of NRMM in both directives (art. 3 (28) of RoHS II and art. 3 No. 1 (d) of WEEE II) limit the exclusion to machinery with an on-board power source. NRMM without its own power source (e.g. cable powered, for example machinery used underground because of explosive atmosphere where a combustion engine would be too dangerous) would fall into the scope.

This is not justified, particularly as models variants exist with two different power sources – one model with combustion engine, the other with cable – in order to offer the machine for different applications. So, one model would be out of scope, the other would be in. CECE therefore calls upon the European Commission to take this

into account when assessing the scope of both directives (art. 24 RoHS II and art. 2 No 5 WEEE II) and to propose the necessary changes to the legal texts.



Examples of NRMM without on-board power source: concrete spraying machine & wheel loader used in mining (both cable powered)

### III. **Concern regarding the specifically-designed-for exclusion definition for RoHS II**

The exclusion in Article 2 (4) (c) of RoHS II is for 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. Remote control device for NRMM or other excluded products thus will fall into scope because it will not be installed on the excluded product. However, part of the remote control system will have to be installed on the excluded product to receive signals from the remote control device to operate the product, and will qualify for the exclusion in Article 2 (4) (c). Thus CECE recommends the European Commission to clarify that the definition of “to be installed” in Article 2(4) (c) of RoHS II applies not only for products that are physically “to be installed” as part of another type of equipment that is excluded, but

also for products that are fully integrated and can only function in conjunction with another type of equipment that is excluded.

#### **IV. Concern regarding the specifically-designed-for exclusion definition for WEEE II**

As mentioned above, RoHS II and WEEE II exclude non-road mobile machinery, large-scale stationary industrial tools and large-scale fixed installations from their respective scope. Previously, WEEE had excluded equipment that is “specifically designed and is to be installed as part of” excluded or out-of-scope equipment. However, the recast of the WEEE Directive puts in place new language for the specifically-designed-for exclusion (Article 2(3) (b)), which requires equipment to be “specifically designed and installed as part of” excluded or out-of-scope equipment in order to qualify for this exclusion. This difference in language would bring into scope many EEE replacement parts that are used only on excluded/ exempted equipment and had been excluded previously because they were not “finished products” as described in the WEEE I and draft WEEE II FAQ 1.3. The request is for this issue to be considered when finalizing the European Commission’s FAQ document for WEEE II, and potentially propose the necessary revisions to the Directive.

#### **V. Concern regarding RoHS II FAQ**

CECE would also like to suggest modifying the Commission’s FAQs for RoHS II with regard to two aspects.

##### **1. Question Q3.1**

The FAQs explain in Q3.1 that machinery “that is intended to be used on different sites during its life is not considered as permanent” (p. 11), thus not falling under the exclusion of large-scale stationary industrial tools and large-scale fixed installations (art. 2 No. 4 (d) and (e) RoHS II and art. 2 No. 4 (b) and (c) WEEE II). Certain types of construction machinery may be moved between job sites during their often considerable long lifetime (see photos of two examples below). The criterion should therefore not be if a machine is intended for use at one single location during its whole lifecycle, but rather that it is not readily re-locatable. Construction, mining and other field machinery that can only be re-located to a different site after de-installation by professionals and with considerable input from machines for de-installation/re-location should be considered as “permanently” installed. These machines, e.g. transportable crusher, builder hoists, externally powered construction equipment, should logically be excluded from the directives.



builder hoist



crusher

The draft WEEE II FAQ give a much better interpretation of “permanently installed” (Question 2.7.):

“For LSSIT, “permanently installed” means the useful function of the equipment is intended to occur in a fixed location...equipment that is intended to be used on different sites, or in different locations, while providing its useful function is not considered as permanent”.

The addition of “while providing its useful function” is the key difference that takes into account the specific characteristics of permanently installed construction equipment. To take one example: A builder hoist is NOT providing its useful function when disassembled and transported to the next job site. It will therefore benefit from the exclusion.

CECE therefore calls upon the European Commission to modify the RoHS FAQs in Q3.1 as follows:

1. Add to the sentence “On the other hand, EEE that is intended to be used on different sites during its life is not considered permanent” the phrase “while providing its useful function” as it is written in Question 2.7 in the draft FAQ on WEEE II. By doing so, both FAQs are aligned which makes the FAQs more coherent.

2. Modify the following sentence as follows:

It is an indicator of permanent use if the equipment is not readily re-locatable (or 'mobile intended') **or** if it is intended for use at one single location."

**2. Question Q6.9**

CECE fully supports the reasoning of Q6.9 regarding the interpretation of "professional use". However, we suggest writing "modifying the supply chain" instead of "modifying the purpose of the EEE". If a NRMM is made available for non-professionals, its purpose remains unchanged – an excavator will still be an excavator – but the characteristics of the user change. Besides, CECE suggests deleting the reference to Article 11 of the directive. This might be misleading, as Article 11 is about modifying the EEE as such, hence a physical modification.

**VI. Concern regarding future REACH substance restrictions**

The RoHS II FAQs explain in Q1.5 about the relationship between REACH and RoHS that "When overlaps occur, the strongest restriction (i.e. the lowest maximum concentration) should be applied." However, there are several exclusions in RoHS II for various products and there are no exclusions in REACH. Potentially, future REACH restriction might disqualify RoHS exclusions unintentionally. CECE therefore calls upon the European Commission to consider RoHS II exclusions in future REACH restrictions development and ensure the validity of RoHS II exclusions when applicable.

**VII. Conclusion**

CECE calls upon the European Commission to take our concerns into account and modify the definition of NRMM in RoHS II and WEEE II, criteria in Article 2(4) (c) from RoHS II and Article 2(3) (b) from WEEE II and adapt the FAQs as proposed.

**CECE**

*The Committee of European Construction Equipment ([www.cece.eu](http://www.cece.eu)) is the recognised organisation representing and promoting the European construction equipment and related industries in order to achieve a fair competitive environment via harmonised standards and regulations. CECE is a European network consisting of a secretariat in Brussels and national association offices in 14 different European countries. The industry behind CECE comprises 1,200 companies. In 2012, these equipment manufacturers had a total turnover of 25 billion € and employed 130,000 people directly. European construction machines represent around 25% of the worldwide production. Manufacturers include large European and multinational companies with production sites in Europe, but the majority of companies are small or medium-sized.*