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European Commission
DG Environment, Unit G4 – Consultation Directive 2002/95/EC
B-1049 Brussels, Belgium

Response to the Stakeholder consultation on adaptation to scientific and technical progress under Directive 2002/95/EC for possible amendment of the annex

The Bellona Foundation appreciates due notification of this consultation. As pointed out in previous consultations regarding possible amendments, Bellona is concerned that the RoHS Directive might be weakened by too many exemptions from the requirements of article 4 (1). Strong demand for the restrictions on the use of substances with harmful effects on human health and the environment is a driver for the industry to provide alternative substances with less harmful effects. Restrictions will also make the alternatives more economically competitive. The Bellona Foundation believes that restrictions on substances with documented harmful health and environmental effects will make the European industry more innovative and competitive in the long-term. It is also important to remember that exemptions from the requirements of article 4(1) in the Directive not only have direct effects of the environment in itself, but also contribute to maintaining the demand and production of harmful substances.

In short, the substances suggested for amendments all have well-documented harmful effects on human health and the environment. It should be obligatory to provide specific plans for substitutions of the substances that are exempted from the restrictions before they can be placed in the annex. The responsibility for working out such plans must lie within the industry.

Requirements before exemptions from the Directive can be given

Many suggested amendments forwarded by stakeholders lack information about possible alternatives which are already on the market. An important reason for this could be that companies who have developed alternatives to the harmful substances do not want to discredit requests for exemptions suggested by their competitors, because they often co-operate in other business areas. Furthermore, many of the suggested amendments are based on the importance that the products comply with specific technical characteristics or operate under certain conditions. However, in many cases there is no information proving that environmentally sound substitutions are not available or fail to perform equally well. This is why there is a need for the Commission to go through the suggestions to find out which of the applicants has put effort into finding substitutes and put forward concrete proposal(s) for how to solve their problem.

The RoHS Directive comes into force on the 1st of July 2007. In the argumentation for exemptions it is claimed that finding substitutes for dangerous chemicals is a lengthy process. The date for the Directive to enter into force has been known since 2002. In most cases, five years should be enough time for the industry to find substitutions for prioritised substances.

Bellona also wishes to stress that the scope of the RoHS Directive is to replace the use of hazardous substances and not to ensure the prolongation of technology that must be considered out of date. In some cases, the argument for allowing continued use of hazardous substances is that a ban will decrease the competitiveness of European industry compared to industry in other parts of the world. However, it follows from the scope that industry still using harmful substances when alternatives are available must be looked upon as out of date and thus does not qualify for the exemptions placed in the annex.

Plans for substitutions for substances that are placed in the annex

As mentioned in previous consultations, the Bellona Foundation believes that before hazardous substances can be exempted from the restrictions of the Directive and placed in the annex, a plan for their phase-out must be provided by the applicant. This plan should also include information on efforts to find competitive alternatives and when such alternatives might substitute the use of more harmful substances. This will be an effective instrument to make producers and importers conscious of the effects their products have on human health and the environment, and also prevent continued use of harmful substances without any effort to find less harmful alternatives.

Oslo, 15th of May 2006

Best regards

on behalf of the Bellona Foundation

Gunnar Grini (signed)