

EucoLight feedback on the Call for Evidence: Environmental impact of waste management – revision of EU waste framework

February 2022

EUCOLIGHT, the European association of lighting WEEE compliance schemes welcomes the European Commission initiative to review the waste framework Directive and its objective to improve the overall environmental outcome of waste management in line with the waste hierarchy and the implementation of the polluter pays principle, potentially via Extended Producer Responsibility schemes.

Taking into consideration the Green Deal and Circular Economy Action Plan, EucoLight recommends that the revised EU waste framework embraces the principles of the circular economy, in the full implementation of the provisions on **waste prevention**, preparation for **re-use** and **recycling**.

Improving compliance with extended producer responsibility requirements:

Providing guidance and explaining how to improve compliance with extended producer responsibility (EPR) requirements, is one of the policy options mentioned in the Commission Call for Evidence: Environmental Impact of waste - revision of EU waste framework.

EUCOLIGHT is of the general view that WEEE EPR organisations work well; there is an effective market operating. However, there are several situations in which the legislation is inadequate, or the market does not function adequately, especially for lighting WEEE organisations, leading to unfair or suboptimal outcomes for recycling and the environment. EUCOLIGHT has welcomed, at the time, the requirements in Article 8a of Directive 2018/851 amending the waste framework Directive which have been a notable step forwards to ensure fair competition, effectiveness, and transparency in the EPR model. But EUCOLIGHT also makes the following key recommendations that have not been adequately addressed in Article 8a and are considered of great importance for the effectiveness of the EPR model for WEEE lighting.

- **Collective and Individual EPR organisations should be all subject to a formal authorization (or recognition) procedure to guarantee a level playing field, with the same conditions applicable to all.**
 - Within the application process, Collective and Individual organisations should inform administrations on measures they adopt to fulfil the obligations, and a description of their financial capacity. Experience has shown that in some Member States, individual EPR organisations are not subject to the same level of control and enforcement as Collective ones. This could be because Individual organisations are focused on products with highly concentrated markets or on non-household products, which means producers can readily create a take-back system directly with their own clients.
 - Unfortunately, this situation has allowed producers of household EEE to shift from Collective Organisations to individual models to avoid EPR obligations related

to household products (e.g., collection agreements with municipalities, communication costs etc.). In almost all cases, household WEEE obligations are more effectively achieved under a Collective organization due to the household nature of their products, and due to consumer takeback behaviour. Failure to provide consistent and harmonized enforcement creates unfair advantages to these individual producers and can increase the burden on other agents in the market, like Collective organisations.

- **Collective organisations should be only constituted as not-for-profit entities or operate in not-for-profit manner.**
 - The objective of EPR organisations should be the efficient and sustainable treatment of EPR related waste. To this end, we consider that Collective organisations should be registered as not-for-profit entities. In the case of Individual organisations, since normally no new entity is created for the operation of EPR obligations, administrative measures should be put in place to avoid the generation of profit. It is our view that the important nature of EPR services and the environmental safeguards required are not compatible with the commercial drivers associated with for profit entities.
- **Some recommendations to be taken into consideration regarding the accuracy of EEE and WEEE data, and the need to avoid contamination of waste streams.**
 - Regarding the Put on the Market data of products under EPR policies:
 - Legislation should provide better guidance and **clarification on the scope of EPR legislation**, especially those products subject to current technological innovation. Clear definitions will give producers a level playing field and clarity of their EPR obligations, will provide reliable put on the market figures, and will therefore curb under-financing of EPR obligations by misinterpretation of a given EPR scope. This is clearly the case of lighting products within the WEEE regime. LightingEurope, EucoLight, and the European WEEE Registers Network (EWRN) cooperated to jointly propose **scope definitions**, to support stakeholders. EUCOLIGHT asks the legislator to support these definitions alongside the (EWRN).
 - EUCOLIGHT calls on the legislator to **enhance the role of the National Register of Producers**.
 - As has been demonstrated in many countries, having a central body acting as a National Register of Producers - set up according to the WEEE Directive's provisions - is the most effective way to gather annual declarations of put on the market data from producers and to identify free riders.
 - This body should be established and consolidated in those Members States where it has not been fully operative, to achieve the best results. Furthermore, it is vital that the put on the Market (POM) figures provided to this body should include the data on an individual producer basis, as stated in the WEEE Directive, to calculate their financial liability, and to avoid the risk of misdeclaration by Collective organisations.

- The role of Collective organisations in gathering this information for the National Register Producers must be also promoted. Collective Organisations can be a support for National Registers, providing the put on the market figures (POM) on behalf of their participants and monitoring that those producers comply with their reporting obligations.
- Means must be set for National Registers across Europe to share experiences and information. Cross fertilization will provide opportunities to harmonize reporting formats, to provide common definitions and understandings or to improve cooperation regarding cross-border-cases (i.e., **online/offline free riders** introducing products from one EU country to another). **EUCOLIGHT considers that participation of the National Registers in the (EWRN) is a good opportunity for harmonisation.**
- EUCOLIGHT emphasises the need **to reinforce the quality, reliability, and comparability of reported data used to calculate the collection target.** The reliability of this information is of the most relevance to properly calculate the financial obligations of producers. Regarding WEEE data, EUCOLIGHT calls on Member States to actively participate in the review of the [Commission Implementing Regulation 2017/699](#) establishing a common methodology for the calculation of the weight of EEE placed on the national market in each Member State and a common methodology for the calculation of the quantity of WEEE generated in each Member State. This review should include **engagement with relevant stakeholders in each country, to test the reliability of the data used in the methodology, taking into consideration the conditions of the local market.**

Regarding the collection of products under EPR policies:

- **Legislation should reinforce the application of the precautionary principle to certain higher risk products that are collected under EPR policies.** For example, WEEE lamps (category 3 of the WEEE Directive), have been subject to technological innovation in the last years and this can affect the collection and safety, and compliance with environmental obligations. There has been a shift from Gas Discharge Lamps which contain mercury (GDL) to LED lamps. Both GDLs and LEDs can often be used in the same luminaires, often have the same size, shape and form factor, and fulfil the same purpose.

Differences only appear when these lamps become waste: GDL lamps are considered hazardous waste and sometimes their treatment differs from LED lamps. When disposed, ill-informed voices have proposed that LED lamps be disposed with small household appliances, even though lamps is a separate collection group in the WEEE Directive. This would be a remarkable mistake and result in a high risk of contamination of the Small household appliance stream with mercury containing lamps.

- This is because, as EUCOLIGHT research has shown, consumers cannot reliably differentiate between LED and GDL lamps, particularly those with coated or frosted outer glass. Frequently, only a professional eye can spot the difference. But if a GDL

lamp is disposed in a small household appliance container, the GDL will break contaminating the whole container with mercury. Furthermore, small household appliances are frequently recycled by crushing, and this would result in uncontrolled mercury release to the environment. Therefore, the total container would become hazardous without the knowledge of the waste professional dealing with the container. For this reason, all lamps, whether LED or GDL, must be **collected in the same container, until delivered to the recycler**. Recycler staff are well trained in distinguishing between LED and GDL and can therefore accurately sort a mixed load. But if there is a doubt on a lamp technology, in application of the precautionary principle, it will be recycled as a GDL lamp. For this reason, **EUCOLIGHT emphasises to ensure all lamps are collected in the same container, in accordance with the precautionary principle.**

Regarding eco-modulation of the fees:

- **EUCOLIGHT expresses concerns regarding eco-modulation of the fees and calls on the European Commission be cautious with the adoption of any criteria in this field:**
 - The 2018 Waste Framework Directive requires in article 8a 4(b) a **modulation** of the financial contributions paid by the producers as an incentive for producers to design products that contribute to waste prevention and facilitate recycling. “Where possible”, this shall be defined for individual products or groups of similar products, notably by considering their durability, reparability, re-usability and their recyclability and the presence of hazardous substances.
 - EUCOLIGHT, with other EPR organisations, e.g., WEEE Forum, and EEE producers' associations e.g. LightingEurope, Applia, Digitaleurope, Orgalim has been calling the European Commission so that criteria underpinning the modulation of fees be harmonised at EU level and coherent with existing EU legislation and related European and international standards. Also, to **avoid distortion of the internal market**, we ask the European Commission to take all necessary measures to **discourage Member States to put in place modulated fee schemes**, which deviate from a harmonised EU framework and from setting up new modulated fee schemes until a harmonised EU framework is in place.
 - EUCOLIGHT see **no real benefit in modulating WEEE fees for Lighting products**, as explained in [EucoLight & LightingEurope Joint Position Paper on Eco modulation of fees in Waste Framework Directive \(EU\) 2018/851 of 30 May 2018 amending Directive 2008/98/EC on waste](#). A 2019 internal EUCOLIGHT survey (3 years / 10 countries) concluded that modulation of WEEE fees was largely for commercial reasons and had no impact on LED placed on the market had no impact on LED EEE versus fluorescent products placed on the market.
 - In 2021, EUCOLIGHT joined a multi-stakeholder task force created at the initiative of the WEEE Forum and including EEE producers' associations and several EPR organisations. The initial aim of this task force was to proactively develop a preferred framework, principles, and mechanisms for a harmonised eco-modulated fee scheme in Europe and to assess its economic impact.
 - The results of the works have been compiled in a [report](#), which demonstrates that it is virtually **impossible to have a wide, comprehensive, and ambitious scheme where EPR financial contributions “do not exceed the costs that are necessary to provide waste management services in a cost-efficient way”, and yet has a noticeable effect on consumer and producer behaviour.**

Improving enforcement of EPR requirements, in particular for products sold online to customers in the EU:

- **EUCOLIGHT strongly supports** that **this policy option** be mentioned in the Commission Call for Evidence: Environmental Impact of waste - revision of EU waste framework.
 - The expansion of online sales in recent years has been accelerated. With COVID 19, Online sales create new free-riding opportunities since consumers can buy more easily from distance sellers producers located in other EU countries or third countries, where there is no enforcement of compliance with EPR obligations in the countries where the products are sold. EPR legislation currently fails to give a solution to this model.
 - These *distance seller producers* generally use 2 basic models: **Model 1.** The *marketplace model*: Multi seller platforms where the distance seller producer sells its products directly to final consumer. In this model, the *marketplace* is often able to legally avoid EPR obligations as it is not regarded as the producer. **Model 2.** The *distance seller producer* sells directly to the final consumer in each country through their own website and may use the services of fulfilment houses located in that given country to receive, store, pack, and dispatch the product to the final consumer.
- **We recommend that the Commission takes on the following elements in the revision of the EU waste Framework:**
 - **Take legislative measures** in all extends of the possibilities offered by the Union legislation, in this including dispositions of **the DSA** (Digital Services Act) Regulation, currently under final interinstitutional negotiations. The Commission should translate in the Environmental legislation any dispositions pertinent to **obligations of online marketplaces** in the new DSA. A non-exhaustive list of those obligations can be mentioned here:
 - implementation of the principle that what is illegal offline should also be illegal online
 - reference and definition of the figure of the authorised representative
 - obligation to collect information to collect data on sellers
 - the traceability of traders
 - stay down obligations
 - endeavours to identify and prevent the dissemination of illegal products or services, through measures such as random checks on products
- **Establish express measures to limit online free riding of products subject to EPR.** To this end, EUCOLIGHT welcomes the assessment made by Eunomia on the scale of the issue and generally with their recommendations on this topic in their [Study to support Preparation of the Commission's Guidance for Extended Producer Responsibility Scheme](#).
- **Take into consideration existing initiatives of several countries when seeking to tackle this issue.**

- For example, the French [law against waste and for a circular economy](#) of February 2020 has provided “**the Responsibility by default**” model, which provides an interesting legislative measure, by clearly stating that market places **are liable for their sellers’ EPR obligations**, unless they can demonstrate that the companies selling through their site have already fulfilled their EPR obligations.
- While this responsibility by default model will work in certain countries, we appreciate that local market conditions may require a different approach. To this end, we also support the “**compulsory verification model**” being adopted in Germany. In this model, Electronic *marketplaces* and *fulfilment service providers* are subject to an independent compulsory verification of the compliance status of products sold through their platforms. Essential elements of the German approach are as follow:
 - The electronic marketplaces and fulfilment service providers are subject to an independent compulsory verification.
 - Market places and fulfilment service provider can only offer for products from producers that have properly fulfilled the EPR registration/notification requirements.
 - Electronic marketplaces and fulfilment houses must document the WEEE registration number (of the producer or of their authorised representative), including the brand and type of equipment, of their contractual partners.
 - The data is cross-checked with the German WEEE-register using an IT interface.

Both models, could be implemented, as follows:

- To define according to the Commission’s [Blue Guide on the implementation of EU product rules](#), the following economic actors for the purposes of EPR:
 - Fulfilment Service Providers.
 - Intermediary service providers under the e-commerce directive. (Market places).

AND / OR

- To request the disclosure of the **producer registration number** in all commercial documents issued in any step of the commercial chain up to the final consumer, for online transactions.

AND / OR

- To request the **producer registration number** for all distance seller producers from third countries (non-EU producers) be included in the customs documents for online transactions. This should apply even if the importer finally exports those EEE to a third country.

AND / OR

- To request the **visibility of the fee** in all transactions to track online free riding.

- To prohibit marketplaces and fulfilment services providers **to promote, advertise, intermediate, store, sort, pack, collect, deliver, return, or any other related activity to the put on the market** of EEE from producers located in third countries or in other Member States, via online, when the registration number is not contained in the commercial documents between the aforementioned producer and the final user.
- To require marketplaces and fulfilment services providers **to periodically provide information to the Administrations and National Registers** on the producers -and their POM figures- that sell through their marketplaces or contract the clearance services of fulfilment services providers.
- To implement a comprehensive penalty where there is an infringement of these requirements by producers (and/or authorized representatives), **to prohibit marketplaces to offer these products on their website and to prohibit fulfilment service providers from providing their services for these products.**

ENDS

About EucoLight

EucoLight is The European association of collection and recycling organisations for WEEE lamps and lighting. EucoLight members collect and recycle, in aggregate, 80 % of the lamp waste collected in the 19 countries in which they operate.

On behalf of its 20 members, EucoLight engages with everything related to the WEEE Directive, legislations and standards affecting the collection and recycling of WEEE lighting.

EucoLight is the voice of European WEEE compliance schemes specialised in managing the collection and recycling of WEEE lighting; working to make the circular economy a reality for lighting products.

Founded mid-2015, EucoLight has quickly embarked into constructive dialogue with relevant stakeholders to provide expertise in the field of management and treatment of WEEE lighting and to promote the positive role of Extended Producer Responsibility schemes on the environment and society.