

## **Core messages for the transposition of article 8a of Directive 2018/851, amending Directive 2088/98 on waste.**

17 September 2020

In view of the transposition of Directive 2018/851, amending Directive 2088/98 on waste, by EU Member States, **EUCOLIGHT**, with some 15 years of experience on extended producer responsibility (EPR) in the Waste Electrical and Electronic Equipment (WEEE) lighting sector, and with EPR organisations as members in 19 different Member States, calls on national legislators to ensure that the transposition of Article 8a on general minimum requirements for extended producer responsibility schemes, leads to an efficient level playing field, reducing costs, boosting performance while reducing distortions in the waste market.

### **General Statement**

Our general view is 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 welcomes the requirements in Article 8a** which have been a notable step forwards to ensure fair competition, effectiveness, and transparency in the EPR model and encourages Member State **to fully transpose them into national legislation**. But EUCOLIGHT also asks Member States to implement 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.

### **Recommendations**

**Some recommendations to be taken into consideration on the transposition of the requirements for EPR organisations.**

- **Member State transposition should require that Collective and Individual EPR organisations are 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:**

- Member State transpositions 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. Lighting Europe, Eucolight, and the European WEEE Registers Network (EWRN) cooperated to jointly propose scope definitions, so as to support stakeholders. EUCOLIGHT asks Member States to support these definitions alongside the (EWRN).
- EUCOLIGHT calls on the Member States to **enhance the role of the National Register of Producers**. As has been demonstrated in a large number of 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 Member 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 harmonization.**

- EUCOLIGHT calls on **Member States 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:

- **Member States 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.** 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 calls on Member States to ensure all lamps are collected in the same container, in accordance with the precautionary principle.**

**Some recommendations to be taken into consideration regarding the increasing sales of products via online marketplaces that are not compliant with EPR legislation.**

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 a given 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:

- **Member State transposition should establish express measures to limit online free riding of products subject to EPR.** To this end, EUCOLIGHT welcomes the assessment made by Eonomia 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](#).
- **Member States should 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 by Member States, 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 market places 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 on 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 penalties 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.**

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## About EucoLight:

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

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.

For more information, visit the EucoLight website [www.eucolight.org](http://www.eucolight.org), follow EucoLight on Twitter @EucoLight or contact the Secretary General, Marc Guiraud ([marc.guiraud@eucolight.org](mailto:marc.guiraud@eucolight.org)).