

EucoLight response to the public consultation on the revision of the Waste Framework Directive (WFD)

August 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 (EPR) schemes.

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

Providing guidance and explaining how to improve compliance with EPR requirements, is one of the policy options mentioned in the Commission Call for Evidence for an impact assessment: Environmental impact of waste management- revision of EU waste framework (hereinafter, the Commission Call for Evidence)

EUCOLIGHT is of the general view that WEEE EPR organisations work properly; 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.

However, 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.

SECURE A LEVEL PLAYING FIELD:

EPR is key for the achievement of the circular economy, it is therefore essential to secure a level playing field for producer responsibility organisations. Here are EUCOLIGHT priorities:

REGULATE ONLINE SALES

Improving enforcement of EPR requirements, in particular for products sold online to customers in the EU is one policy option mentioned in the Commission Call for Evidence. This is strongly supported by EUCOLIGHT.

In the consultation on the revision of the WFD, it is also asked to what extent we agree with the following statement "*Extended producer responsibility should be better enforced for on-line sales*". This is strongly agreed by EUCOLIGHT. 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 online marketplace model: multi seller platforms where the distance seller producer sells its products directly to final consumer. In this model, the online 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 Waste Framework Directive:

- **Take legislative measures** in all extends of the possibilities offered by the Union legislation, in this including dispositions of the **Digital Services Act** (DSA) Regulation, currently under final interinstitutional negotiations. The Commission should translate in the Environmental legislation any dispositions pertinent to obligations to online platforms that allow consumers to conclude distance contracts with traders, including online marketplaces, in the 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.
 - the traceability of traders or obligation to collect information and data from traders.
 - endeavours to identify and prevent the dissemination of illegal products or services, through measures such as randomly check whether products have been identified as illegal in official online databases.
- **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/marketplaces deemed to be the producer" model, which provides an interesting legislative measure, by clearly stating that online marketplaces 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, online 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:
 - Online marketplaces and fulfilment service providers are subject to an independent compulsory verification.
 - Online marketplaces and fulfilment service providers can only offer for products from producers that have properly fulfilled the EPR registration/notification requirements.
 - Online marketplaces and fulfilment service providers 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 2022](#), the following economic actors for the purposes of EPR:
 - Fulfilment Service Providers.
 - Intermediary service providers under the e-commerce directive, which also include online marketplaces.

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 online 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 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 online 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 online marketplaces or contract the clearance services of fulfilment services providers.
- o To implement a comprehensive penalty where there is an infringement of these requirements by producers (and/or authorized representatives), **to prohibit online marketplaces to offer these products on their website and to prohibit fulfilment service providers from providing their services for these products.**

BETTER AND CONSISTENT CONTROLS OF COLLECTIVE AND INDIVIDUAL SCHEMES

Collective as well as 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 organisation 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.

SAME RULES FOR ALL ACTORS THAT MANAGE THE WEEE WASTE FLOWS

Stakeholders that manage WEEE that is/are not controlled by PROs (Producer Responsibility Organisations) e.g., Waste operators; should be subject to the same rules that apply to PROs with regards notably to:

- Collection data.
- Control and monitoring from national authorities.

REGULATE THE WEEE EPR MODEL REQUIREMENTS AT EU LEVEL

It is essential that the WEEE EPR model requirements are regulated at EU level to avoid the risk of legislative patchwork all over the Internal Market.

REGARDING ECO-MODULATION OF THE FEES:

EUCOLIGHT expresses concerns regarding eco-modulation of the fees and calls on the European Commission to 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 sees 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.
- 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.
- 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. We call on the Commission to take note of the conclusions of this report.

We remain at your disposal to continue collaborating during the remaining procedure of the initiative: Environmental impact of waste management – revision of EU waste framework.

-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.