

## EucoLight response to the call for evidence for the evaluation of the WEEE Directive

November 2022

EUCOLIGHT, the European association of lighting WEEE compliance schemes welcomes the European Commission initiative to evaluate the WEEE Directive and its intention to pay attention to aspects which are of high importance for us, for example, applying the Extended Producer Responsibility requirements.

EUCOLIGHT herewith points out several issues that need to be addressed in the context of the European WEEE legislation and making a series of recommendations in this respect.

### 1) SCOPE AND (W)EEE DEFINITIONS

#### a. (W)EEE definitions:

The 2012 WEEE Directive lays down that reporting must be performed in six new main categories, amongst which, category 3 (Lamps), category 4 (Large equipment, any external dimension more than 50 cm) and category 5 (Small equipment, no external dimensions more than 50 cm).

In the case of lighting products, lamps would be classified under lamps and luminaires under category 4 or 5, according to their size.

In several Member States (e.g., CZ, PL, RO) integrated LED luminaires/fixtures are considered as lamps. This does not seem correct and might be triggered by economic reasons.

An authoritative document, [“WEEE2 – Definition and Understanding of the 6 Categories-DEFINITIONS, MISINTERPRETATIONS, DIMENSIONS AND MEASUREMENT OF \(W\)EEE”](#) by EWRN, the European WEEE Registers Network provides for the definition of lamps and quote examples and also cases of misinterpretations. According to this document:

1.- Amongst EEE not falling under category 3, lamps, are luminaires.

2.- *“Luminaires are allocated to category 4 or 5”.*

3.- *“Luminaires with integrated light sources (that cannot be removed without damaging the unit) are considered as luminaires”.*

This EWRN document serves a reference point, alongside with the European Commission [Frequently Asked Questions](#) document. They are, however, guidance documents, that are not legally binding. And we should consider changing the annexes of the WEEE Directive to define luminaires in categories 4 and 5 in more detailed way, in this included LED luminaires/fixtures.

#### b. Subcategories for lighting:

The various EU Members States use different WEEE subcategories. This lack of consistency creates considerable red tape for multinational producers. This means different registration per product and country and different reporting per product and country. This represents not only

a major administrative burden for producers, but also for registers; data cannot be compared between registers. Harmonising subcategories in the next WEEE legislation is therefore desirable.

### 2) SAME RULES FOR ALL ACTORS

#### a. Data transparency and control mechanisms:

There are other operators involved in the supply and the waste management chain beyond producers affiliated with take-back systems.

Examples:

- Free-riding producers.
- Producers not taking part in an established producer take-back system.
- Stakeholders that manage WEEE that is/are not controlled by producer take-back system e.g., Waste operators.

Possible mechanisms to be considered to ensure proper enforcement of extended producer responsibility obligations for WEEE:

- Transparency on data from national registers:
  - National Registers should be public, not for individual POM figures, but for aggregated figures and with information of the registered companies.
  - POM should be updated in the national register at least once per year.
- Better cooperation and coordination between the authorities (coordinating instruments, information platform, ...).
- Involvement of customs authorities for imports coming from third countries and monitoring registration in National Registers.
- Reporting of POM to the national register/national authorities: split individual producer (per each category), not in the bulk, should be mandatory in all EU Member States.

With regards target fulfilment calculation, all collection figures coming from all operators should count as overall collection and should be taken into consideration when calculating the collection target fulfilment. Information from schemes and waste collectors alike. This is important, are otherwise take-back system are de-facto punished, specifically on these countries where individual collection targets are established for every take-back system.

#### b. Compliance with extended producer responsibility obligations associated with online sales, the online-free riding issue

The level of non-compliant products supplied through online marketplaces is exceptionally high.

Online marketplaces link producers, often based outside the Union (predominantly in Asia) with consumers inside the Union. Given that the producers are beyond the jurisdiction of the Member States, this means there is very little, if anything, that Member States' market surveillance authorities can do to prevent the import of non-compliant product. Therefore, online platforms facilitate the sales in EU Member States of products from sellers that do not comply with EPR obligations and other Union legislation. Often, such sellers do not have a physical presence or a legal site in the Member State where the product is supplied and have not appointed an Authorised Representative.

## Waste electrical and electronic equipment – evaluating the EU rules

This non-compliance means that EPR financial obligations are not met, and ultimately, compliant producers who do meet their obligations are put at a significant cost disadvantage. In such situations, the online marketplace can legally deny responsibility for compliance. So, there is no economic operator in the Union against whom enforcement action can be taken. The scale of this non-compliance is well established.

The OECD [has stated](#) that “free-riding associated with the rapid growth of online sales is compromising the viability of these schemes and has led to the realisation that additional measures are needed to support their operation”. The OECD Report [“Extended Producer Responsibility \(EPR\) and the Impact of online sales”](#). (June 2017) showed that the overall scale of the online non-compliance issue is likely to be between 5% and 10% of the Electrical and Electronic Equipment market. In the EU alone, 5% to 10% would represent 460,000 to 920,000 tons of WEEE.

A study undertaken by EUCOLIGHT in 10 countries in 2019 has shown that the level of non-compliance is exceptionally high – particularly in respect of smaller products such as light bulbs, hair dryers, electric screwdrivers, and fitness trackers:

| Product category / Country | Czech Republic | Denmark | Estonia | Germany | Italy | Netherlands | Portugal | Slovakia | Spain | UK  |
|----------------------------|----------------|---------|---------|---------|-------|-------------|----------|----------|-------|-----|
| LED bulbs                  | 100%           | 100%    | 100%    | 89%     | 81%   | 100%        | 95%      | 100%     | 81%   | 78% |
| Hair Dryer                 | 100%           | n/a     | n/a     | 96%     | 28%   | n/a         | 97%      | n/a      | 80%   | 67% |
| Washing Machine            | 100%           | n/a     | n/a     | 16%     | 69%   | n/a         | 94%      | n/a      | 50%   | 17% |
| Electrical Screwdriver     | 100%           | n/a     | n/a     | 96%     | 78%   | n/a         | 98%      | n/a      | 75%   | 69% |
| Fitness Tracker            | 100%           | n/a     | n/a     | 84%     | 92%   | n/a         | 98%      | n/a      | 93%   | 91% |
| Tablet/ PC                 | 100%           | n/a     | n/a     | 92%     | 86%   | n/a         | 98%      | n/a      | 68%   | 76% |
| Display Monitor            | 100%           | n/a     | n/a     | 96%     | 43%   | n/a         | 96%      | n/a      | 33%   | 16% |

Three years later, in October 2022, the same study has been undertaken by EUCOLIGHT in 8 countries in order to show that the level of non-compliance is still exceptionally high<sup>1</sup>. EUCOLIGHT plans to continue updating the survey to provide more extensive data from the next steps of the evaluation of the WEEE Directive.

| Product category / Country | Belgium | Czech Republic | Denmark | Germany | Italy | Portugal | Romania | Spain |
|----------------------------|---------|----------------|---------|---------|-------|----------|---------|-------|
| LED bulbs                  | 95%     | 75%            | 100%    | 33%*    | 65%   | 94%      | 100%    | 72%   |
| Hair Dryer                 | 95%     | 40%            | n/a     | n/a     | 44%   | 88%      | 100%    | 60%   |
| Washing Machine            | 85%     | 100%           | n/a     | n/a     | 54%   | 90%      | 100%    | 72%   |
| Electrical Screwdriver     | 100%    | 73%            | n/a     | n/a     | 68%   | 92%      | 100%    | 80%   |
| Fitness Tracker            | 90%     | 73%            | n/a     | n/a     | 88%   | 94%      | 100%    | 92%   |
| Tablet/ PC                 | 100%    | 87%            | n/a     | n/a     | 94%   | 94%      | 100%    | 88%   |
| Display Monitor            | 90%     | 27%            | n/a     | n/a     | n/a   | 96%      | 100%    | 88%   |

<sup>1</sup> In the case of Germany, registration to obtain the WEEE-number of foreign producers increased. Nevertheless WEEE-compliance of foreign producers is not secured.

It is quite reasonable to assume that if this level of non-compliance is detected in Union WEEE legislation, that similar levels of non-compliance would exist in other legislation covering, for example, waste packaging, product safety, ROHS, REACH, and others.

We recommend that the Commission takes on the following elements in the revision of the WEEE 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 and somehow similarly in Austria. 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 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 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 afore-mentioned 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.
- 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.

### **c. Collective versus individual take-back systems**

Under the WEEE Directive, producers should finance at least the collection from collection facilities, and the treatment, recovery, and disposal of WEEE. Producers are allowed to set up and to operate individual and/or collective take-back systems.

Collective, as well as individual take-back systems, should be all subject to a formal authorisation (or recognition) procedure to guarantee a level playing field, with the same conditions applicable to all.

Within the application process, collective and individual take-back systems 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 take-back systems are not subject to the same level of control and enforcement as collective ones. Rationale: 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 extended producer responsibility 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 harmonised enforcement creates unfair advantages to these individual producers and can increase the burden on other agents in the market, like collective systems.

As a result:

- Clear criteria for individual take-back systems should be set up to meet the same standards and obligations of CRSOs and the same level playing field and administrative conditions when entering the market.
- The use of individual systems should be limited to B2B. In the case of B2C, only possible if they collect only their own brand.

Several Member States have a solution for this situation (notably Austria, and Czech Republic).

An interesting solution is provided by Austria, where producer choosing the individual take-back scheme solution can collect only its own brand. More specifically producers shall, for EEE for private households put on the market after 12 August 2005, fulfil their take-back obligation either:

1. individually by sorting out all EEE put on the market by them; these producers shall conclude contracts with the operators of all collection facilities where their equipment may accrue on the sorting out of EEE put on the market by them for private households and shall initiate a procedure pursuant to Article 13a para. 3 AWG 2002, providing evidence of the contracts concluded, a guarantee pursuant to Article 8 (1)(2) or (3) and the technical requirements necessary to fulfil the sorting procedure, by notifying the Federal Minister of Agriculture, Forestry, Environment and Water Management;

or

2. in the ratio of their EEE put on the market to the EEE reported by the collection and recovery systems as having been put on the market in total, by participating in a collection and recovery system pursuant to Article 15).

Another solution is that of the Czech Republic, where a producer who wants to be individually fulfilling (obligation of the take back) producer, must deposit 20% of the annual costs into a special account of government, as deposit. Furthermore, each individual producer must have at least one public collection point in each of the 800 largest Czech municipalities.

#### **d. Requirements for producers leaving a take-back system:**

Take-back systems, members of EUCOLIGHT, have reported challenges with regards to how to calculate the collection rate in the event a producer leaves the take-back system during a given year.

In Romania, currently, a take-back system has no collection target for the first year due to calculation formula. This implies the following:

- Thus, a producer reports as POM in one year (and it pays for this to the actual take-back system), the take-back system must fulfil the collection target in the next 3 years.
- If a producer decides to leave the take-back system during these 3 years, the next take-back scheme cannot reach this target, as it doesn't have the financial resources to do so (he will pay from the other producers' members budget already). The take-

back system will meet the collection target for what the producer reports at the time of the move.

- If the producers leave with the money as well, the former take-back will be in a financial challenge, as it has already made its budget and can't keep budgeting all the time because of "producer tourism".
- A consequence of this situation is that Romania has 20 take-back systems, most of them new, with very low fees and after 3 years they disappear.

As a result, conditions for producers to leave from take-back scheme to another should be regulated with clear provision.

A possible solution is offered by the Czech regulations that stipulate that:

1. Producers can leave a take-back system only at the end of the year (they must be whole year in one collective system) – the fact that producers complete the whole year in one collective take-back system only renders reporting of POM and calculation of the collection target responsibility easier.
2. Producers takes with them collection responsibility for all three previous years. The old collective take-back system forwards this information to the new collective take-back system. However, the producer does not take any money to the new collective system.
3. For a new producer on the market, POM of the first year is taken as if he had reported the same amount of POM two years before, to calculate his collection responsibility. It probably sounds harsh and unfair, but otherwise it was simply impossible to prevent different manufacturers from changing legal forms and presenting themselves as new manufacturers every year.

### **e. Waste available for collection**

As above-stated, part of the waste available is not handled by established producer take-back systems. This is notably due to sorting errors by (household) waste holders, consumers who decide to not carry out a separate collection of their WEEE, part of the waste available being included in other WEEE (e.g., lamps in luminaires), some have also a non-identified destination that end-up with professional waste holders, and theft.

Regarding collection objectives, the current WEEE Directive set 2 calculation methods for use by Member States, 65% of POM or 85% of WEEE generated. Perhaps it is time to think to have holistic approach taking consideration waste held by all the above-mentioned actors. Currently this is an area of investigation, that require feasibility analysis and, perhaps, ensuing proposals for fine-tuning calculations in order to approach the reality of the actual waste available for collection.

## **3) FINANCIAL ASPECTS**

### **a) Visible fee**

The situation of visible fee, i.e., the obligation of producers to display the financial contribution they pay to the take-back schemes varies across the different EU Member States. It goes from obligation to prohibition, to obligation to B2B only, or even to the end customer. EUCOLIGHT considers Fee Visibility as a good tool for WEEE financing transparency.

Some EUCOLIGHT members have reported a lack of clarity of their national laws. This is the case of Czech Republic. It has been reported that the visible fee appears to "cure" many

issues at national level e.g., online free-riding, volume/quantity, discounts on waste management fees from some take-back schemes to some big producers.

Please note that in Spain, there is a special registration number requested for all commercial transactions that solving the above-mentioned issues (e.g., free riding).

However, more detailed specifications by the European legislation could prove necessary in case certain Member States render the visible fees mandatory at least up to the level of distributors.

### **b) 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.

EUCOLIGHT will welcome opportunities to discuss with the Commission, its consultants, and other stakeholders elements of the evaluation of the WEEE Directive.



- 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.