

Position Paper:

EucoLight position paper and recommendations for the public consultation on the evaluation of the Directive on waste electrical and electronic equipment (WEEE)

September 2023

EUCOLIGHT, the European association of lighting WEEE compliance schemes representing the take back systems specialised in the collection and recycling of lighting products, welcomes the European Commission initiative to evaluate the Directive on WEEE with regards to its objective, performance, and articulation with other EU policies.

With this position paper, EUCOLIGHT complements its response to the public consultation questionnaire, pointing out several issues that need to be addressed in the context of a revision European WEEE legislation while making a series of recommendations.

Our recommendations in brief:

- Overall, the Directive has been effective to reach its objectives but more harmonisation in some areas is required.
- Ambiguities on (W)EEE definitions for lighting must be addressed.
- Subcategories for lighting must be harmonised in the EU.
- Extended producer responsibility: same rules for all actors and for a level playing field.
- The non-compliance of EEE sold through online marketplaces must be tackled.
- WEEE collection: consideration for waste available for collection.
- The benefit of eco-modulation of the fees is questionable.
- Linked EU legislation should be aligned and non-contradict themselves. The WEEE Directive should only focus on the collection, transport, and treatment of the WEEE.

1. OBJECTIVE AND SCOPE:

a) Efficiency: successes but further harmonisation needed:

For the lighting industry, the Directive has been very effective in the reduction of negative impacts on the environment and on human health, e.g., through the retrieval/recycling of secondary raw materials of lamps and luminaires. At present, the recycling of gas discharge lamps is efficient, and the recovery targets are achieved. For future products, e.g., LEDs, bespoke recovery targets will be needed. Technical requirements and standards have also helped for the implementation of best practices e.g. the development of unbreakable boxes for the collection of GDL lamps.

However, the Directive has been ineffective in contributing to the reduction on the generation of WEEE. It was admittedly not its primary aim. When it comes to illegal shipment of WEEE out of the EU, the lack of national enforcement by national authorities is a key issue. A better contribution of the customs authorities is needed. The Directive has, in some extent, contributed to the establishment of a level playing field between the Member States for collection and recycling. Several issues are still unsolved: absence of national producers

registers in all Member States, targets setting at national level, diverse monitoring conditions of collective and individual takeback schemes at national level.

b) WEEE definitions: address some issues relating to lighting:

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 some Member States (e.g., CZ, PL, RO) integrated LED luminaires/fixtures are considered lamps, which does not seem correct nor in line with the reference document by EWRN¹ (European WEEE Registers Network) that provides for the definition of lamps and quote examples and cases of misinterpretations.

A binding classification in the annexes of the WEEE Directive should be introduced to harmonise the criteria throughout Members States. The modifications to be made in the Annex IV of the WEEE Directive are as follows:

- 3 Lamps: LED lamps.
- 4 Large equipment: luminaires with integrated LED modules.
- 5 Small equipment: luminaires with integrated LED modules.

c) Subcategories for lighting:

The various EU Members States use different WEEE subcategories. This lack of consistency creates considerable red tape for multinational producers with different registration 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. EXTENDED PRODUCER RESPONSIBILITY: SAME RULES FOR ALL ACTORS AND FOR A FAIR LEVEL PLAYING FIELD:

a) Data transparency in put on the market figures (POM):

There are other operators involved in the supply and the waste management chain beyond producers affiliated with take-back systems which compromise the proper enforcement of EPR obligations for WEEE. **Possible mechanisms to improve this situation:**

- Transparency on data from national registers:
 - There should be National Registers in all Member States for put on the market (POM) figures registration.
 - National Registers should be public, not for individual placed on the market (POM) figures, but for aggregated figures by category and with information of the registered companies.
 - POM should be updated in the national register at least once per year to allow administrations to calculate the collection target for the year.
 - Take back systems should be informed on the official figures of POM registered by its producers to calculate their responsibility on collection.

¹ https://www.ewrn.org/fileadmin/ewrn/documents/191001_EWRN_Definition_6_categories_fin.pdf.

- Reporting of POM to the national register/national authorities should not be done in bulk, with no identification of each individual producer. Extended Producer Responsibility (EPR) is a producer's obligation and every producer should be identified by the Register and linked to his own POM figures (taking into consideration public information limitations).

b) Compliance with Extended Producer Responsibility obligations associated with online sales, the online-free riding issue:

Improving the enforcement of Extended Producer Responsibility (EPR) requirements, for products sold online to customers in the EU remains a critical issue. There is still a considerable number of non-compliant products supplied through online marketplaces². This is the case where traders are located outside of the EU and do not have an EU-based economic operator that can be held liable for the traders' products if they are non-compliant. As a result of this situation, compliant producers are put a significant cost disadvantage, not to mention the negative consequences on the environment.

At EU level, several recent or on-going legislation specifying obligations of online marketplaces could serve as a reference point, namely the Digital Service Act³, the EU Regulation on Batteries and waste batteries and the proposal for a Regulation on packaging and packaging waste. Similarly, solutions developed in e.g., Austria, Finland, France, Germany, and Spain should be explored.

Non-exhaustive list of recommendations:

- 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 transactions⁴.
- To request that 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:
 - This will be key in the years to come, following the Commission proposal for an EU Custom reform presented in May 2023 that foresees:
 - Creating a single online environment: the new EU Customs Data Hub.
 - Make online platforms the official importers ensuring that goods sold online into the EU comply with all customs obligations and in line with EU environmental, safety and ethical standards.
- Member States shall ensure that online marketplaces are granted access, free of charge, to the information in the National register when the information is not publicly accessible⁵.
- Collaboration among Member States National Registers for tracking of online intra-communitarian movements.
- Involvement of customs authorities for imports coming from third countries and monitoring registration in National Registers should be performed.
- To apply market surveillance rules to WEEE in line with the proposal of regulation on packaging and packaging waste.
- To prohibit online marketplaces and fulfilment services providers to promote, advertise, intermediate, store, sort, pack, collect, deliver, return, or any other related activity to

² [Updated EucoLight study shows high level of EPR non-compliance through online marketplaces.](#)

³ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

⁴ Art. 62.6 of Regulation (EU) 2023/1542 on batteries and waste batteries can serve as a reference.

⁵ Art. 55.13 of Regulation (EU) 2023/1542 on batteries and waste batteries can serve as a reference.

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 are allowed to set up and to operate individual and/or collective take-back systems. Experience has shown that, in some Member States, individual take-back systems are not subject to the same requirements to operate, and the same level of control and enforcement as collective ones. 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:

- Individual systems should be subject to the same administrative recognition as collective systems. (i.e., authorization)⁶.
- Clear criteria for individual take-back systems should be set up to meet the same standards and obligations of take-back systems and the same level playing field and administrative conditions.
- The use of individual systems should be limited to B2B. In the case of B2C, only possible if they collect only their own brand.

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, which has financial and liability consequences.

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

We can therefore **recommend the following measures:**

- A) Producers only to leave a take-back system 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.

⁶ in Art.58 of Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries can serve as a reference.

B) 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.

e) Requirements for new take-back systems coming into the market:

Administration, when authorising new take-back systems in the market, should calculate a given liability for that year and the Producer Responsibility Organisation should guarantee that the fee covers the costs of that liability plus the structural costs. This measure will minimise the effect that occurs in some Member States, where new take-back systems are set up with no collection target for the first year and devote their efforts only to collecting fees from their producers and disappearing in the next year.

3. WEEE COLLECTION:

a) All collection figures must be taken into consideration for target calculation:

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

b) Consumers behaviour:

The current WEEE Directive stipulates that Member States shall ensure that users of EEE obtain the necessary information about the proper way to dispose WEEE, and that part of this information shall be provided by producers and/or distributors. Lamps take-back systems have invested on communication campaigns targeting consumers and professionals over the years to improve collection and awareness that has led to good results. However, there is room for improvement in involving other actors. We recommend that the Directive should **establish that there should be sufficient collection system networks for collective and individual take-back systems**. Some elements are still missing in the legislation, e.g., number of collection points that should be established per inhabitant and the distance between them.

c) Waste available for collection:

As above-stated, part of the waste generated is not available neither 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. In this respect one could also argue that the 65% and 85% are no longer in line with other targets and goals for circularity and the aim to get higher on the R-ladder⁷. I.e., The current target requires the producers to take back 65% of what has been put on the market in the 3 previous years. This means that the target obliges our members to take back from the market LED-lamp and luminaires within 3 years

⁷ R-ladder: refuse, reduce, resell/reuse, repair, refurbish, remanufacture, repurpose, recycle materials, recover (energy) and re-mine.

although they have a lifetime of often more than 10 years. Perhaps it is time to think to **have a holistic approach taking consideration waste held by all the above-mentioned actors.**

d) Environmental efficiency of collection allocations:

Efficiency and sound environmental operations are key. In some countries, national administrations do request the Producer Responsible Organisations allocations by the national register to collect WEEE within (unrealistic) deadlines, which lead to a single transport only for one pick up and transport WEEE with only partly full trucks. This generates unnecessary CO2 emissions. As a result, **authorities should be prevented to impose such uncoordinated regulatory demands with negative operational and CO2 impacts.**

e) With regards to the collection of lamps:

Future legislation should preserve the possibility for Member States shall adopt appropriate measures to minimise the disposal of WEEE in the form of unsorted municipal waste, to ensure the correct treatment of all collected WEEE and to achieve a high level of separate collection of WEEE, notably, and as a matter of priority, for all lamps, as many of them are containing mercury.

4. WEEE TREATMENT:

a) Take-back systems positive impact:

The Directive has had a positive impact on the environment and human health during collection and treatment of WEEE. EUCOLIGHT members, as take-back systems, have positively contributed. Concrete examples include the design of collection boxes avoiding breakage, recovery of Secondary valuable raw materials. EUCOLIGHT, as an association, developed common activities in the field of research and development for logistics and treatment e.g.: mercury analysis method evaluation, technical method for automated lamp type detection within lamp waste streams, study on LED lamps recycling, study on applications for recycled glass in the ceramics industry.

b) WEEE treatment standards:

As a follow up of the mandate by the Commission, European Standards for treatment of WEEE have been developed (EN 50625 on WEEE treatment and EN 50614 on WEEE preparing for reuse). These minimum quality standards are used as reference for contracts and audits in some countries. But the level of implementation differs from country to country.

Other than the standards developed under the Commission's mandate 518, the consultants' recommendations from the "Study on Quality Standards for the Treatment of WEEE" (Reference: ENV.B.3/ETU/2018/0014) appear inappropriate to be adopted as such to in any Directive or implementing act. For understandable reasons, the study was limited to the gathering of existing regulations in the Member States but without analysing context, background, or acceptance of those national regulations, which in some cases even were taken from rules making recommendations in non-EU Member States").

5. FINANCIAL ASPECTS:

a) Visible fee:

The situation of visible fee varies across the different EU Member States. EUCOLIGHT considers Fee Visibility as a good tool for WEEE financing transparency. However, some EUCOLIGHT members have reported a lack of clarity of their national laws. **Therefore, 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 have questioned the benefit of eco-modulation of the WEEE for lighting products⁸. A comprehensive study by WEEE Forum and other stakeholders⁹ has further demonstrated that there was “very little room to reduce technical treatment costs through treating “greener” products” and “huge limitations to delivering a product or consumer change through eco modulation”. This report referred to the results of a 2019 EUCOLIGHT survey, which reviewed the data from 10 EU Member States across three years. It assessed the actual impact of modulated fees on the change in market share of certain lighting products. The fee modulation was largely for commercial reasons, but nevertheless, the potential impact on changes to producer and/or consumer purchasing, would have had the same impact as eco-modulated fees. EUCOLIGHT therefore calls on the European Commission to **be cautious with the adoption of any criteria in this field of eco-modulation of the fees.**

6. COHERENCE/LINKS WITH OTHER EU LEGISLATION

a) Links between the WEEE Directive and the Ecodesign Directive:

We consider it essential that the WEEE Directive and the Ecodesign Directive are aligned and do not contradict themselves. The WEEE Directive should only focus on waste collection, transports, and treatment of the WEEE. Ecodesign aspects of products should not be tackled by the WEEE Directive.

b) Alignment on WEEE treatment rates and RoHS:

WEEE treatment: POP regulation (annex IV) targets different substances that must be eliminated through recycling treatment processes. WEEE are concerned by the obligation to **eliminate 5 brominated flame retardants**, that belong to the PBDE family (Polybrominated diphenyl ethers). Currently, the **residual concentration of these 5 PBDE** after WEEE treatment and depollution **must be lower than 500 mg/kg (=0,05%)**.

Note 1: The POP regulation has been updated on 23rd November 2022: the regulatory threshold is fixed at 500 mg/kg until 2025 and will be gradually lowered to 350 mg/kg until 2027 and 200 mg/kg after 2027.

Note 2: POP regulation also fixes regulatory thresholds for products put on the market (in Annex 1). However, for PBDE restrictions, all products concerned by RoHS directive, are exempted of the PBDE threshold fixed in this annex.

⁸ [EucoLight and LightingEurope joint position paper on eco modulation of fees in Waste Framework Directive \(EU\) 2018/851.](#)

⁹ [https://www.eucoLight.org/publications/eco-modulation-of-fees-for-greener-products-concerns-and-challenges/.](https://www.eucoLight.org/publications/eco-modulation-of-fees-for-greener-products-concerns-and-challenges/)

EEE production: EEE put on the market must comply with **RoHS directive**. Currently, under RoHS directive, it is forbidden to put on the market an EEE with a concentration above 1000 mg/kg (=0,1%) of PBDE in its materials. This threshold concerns all the substances of the PBDE family (thus a wider range of substances than the 5 PBDE targeted by the POP regulation).

Regulation	Obligation	Threshold	Substances
POP regulation (Annex IV – waste)	fixes an obligation to decontaminate all waste (such as WEEE)	to reach a residual concentration of less than 500 mg/kg (until 2025, and then 350 mg/kg in 2027 and 200 mg/kg after 2027)	for the sum of 5 substances of PBDE family
POP regulation (Annex I – products)	fixes an interdiction to put products on the market (*excepted for products submitted to RoHS)	containing a concentration of more than 500 mg/ kg	for the sum of 5 substances of PBDE family
RoHS directive	fixes an interdiction to put EEE on the market	containing a concentration of more than 1000 mg/ kg	for the sum of the all the substances of PBDE family

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

- ENDS -