



EEB position paper on the proposal for the revision of the directive on waste electrical and electronic equipment (WEEE)

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This paper presents the views of the European Environmental Bureau (EEB), the largest European federation of environmental citizens' organisations, on the revision of the Directive on Waste Electrical and Electronic Equipment (WEEE) published by the Commission in December 2008.

Introduction

EEB welcomes the revision of the WEEE Directive as an attempt to improve the shortcomings of current legislation and to overcome severe implementation deficits. The proposal safeguards the environmental objectives and the main provisions of the original Directive such as individual producer responsibility (IPR).

However, the Directive needs to be further improved to increase separate collection of all types of WEEE and to give real incentives for design improvements of electrical and electronic equipment to reduce waste. In particular, EEB has concerns about the following aspects of the proposal:

- The Commission proposes a new minimum collection target: by 2016, 65% of the average weight of EEE placed on the market in the two preceding years. **EEB proposes that Member States should comply with the target within 2 years.** This should be feasible as current rates of separate collection of WEEE already reach or exceed the proposed target.
- The new collection targets are still based on weight. This overall target could be met purely by collecting heavier end-of-life equipment, thereby allowing current practice of omitting lighter or smaller WEEE from collection systems to continue. **Separate sub-categorised, product-specific targets, at least for light appliances and lighting equipment, are therefore essential** to avoid such products being disposed of in municipal waste and reducing negative impacts on the environment and human health.
- While **EEB welcomes that no changes were made to Article 8.2, which establishes the principle of Individual Producer Responsibility (IPR)**, we are disappointed that the Commission did not react to severe implementation deficits. In light of a very heterogenic legal environment in the different Member States, **we call on the Commission to propose a set of enforceable requirements for all WEEE producer compliance schemes on how to implement IPR. These requirements would give clear guidance to all stakeholders and ensure that IPR is implemented in practice in all Member States.**
- **EEB is very concerned about a proposed new provision on “visible fees”.** “Visible fees” describe the practice of showing the end-of-life costs of a product separately from the price of the appliance at the time of purchase. The new proposal would oblige Member States to allow the use of visible fees for an indefinite period instead of only allowing it for a temporary period (until 2013/2015 in the current directive). This would contradict the principle of internalisation of end-of-life costs in the price of appliances. In addition, many stakeholders deliberately interpret this provision as an opportunity for imposing a **flat and undifferentiated fee** to all producers. Under such circumstances, there is **no economic incentive for producers to compete for improving the recyclability and durability of their products by reducing their real end-of-life costs through design.** Any mechanism that discourages differentiation undermines the implementation of Individual Producer

Responsibility (IPR) and its potential to create design incentives. **EEB proposes reinstating the current provisions of the WEEE Directive and deleting the new article 14.1.**

- **EEB is concerned about the proposal to delete the reference to the waste hierarchy and the priority given to re-use and recycling** in Article 1 on subject matters. The five-tiered “waste hierarchy” as established by the new Waste Framework Directive, has been one of the cornerstones of EU waste legislation and should clearly be enshrined in the WEEE Directive.
- The Directive revision **fails to provide real drivers for re-use** of electronic and electrical equipment since it mainly proposes a 5% increase in the combined recycling and reuse target to accommodate re-use. While we support ambitious targets for recycling, the combined targets proposed by the Commission could be met purely by recycling activities and do not promote reuse. EEB therefore recommends that the Directive explicitly requires a minimum of 5% re-use. We also recommend that certified re-use networks should be given an early and guaranteed access to the WEEE stream.

The following sections outline EEB’s recommendations for improving collection, facilitating the promotion of IPR and driving reuse, recycling and better treatment of WEEE.

Ambitious targets adapting to market realities in Member States

The Commission proposes a new minimum collection target: by 2016, 65% of the average weight of EEE placed on the market during the two preceding years. It also suggests focusing separate collection efforts on white goods (“as a matter of priority” for cooling and freezing equipment in Article 5).

EEB supports the introduction of a percentage-based target rather than a common weight-based per capita target. As the level of WEEE in different Member States differs significantly (from about 6kg to 24kg per capita), the challenge of achieving the current annual collection target of 4kg per capita is far from equal for all countries. A target based on a percentage of appliances previously put on the market successfully removes these unequal conditions for different Member States.

Recital 14 of the proposal states that “65% of electrical and electronic equipment placed on the market is already separately collected today, but more than half of this potentially leaks to improper treatment and illegal exports”. Hence, the revision proposal does not aim to increase the rate of separate collection but rather to steer collection to accurate compliance schemes. While EEB supports all efforts to avoid leakage from official collection routes, the timeframe to meet the collection target is not ambitious enough. We recommend that Member States should meet the target two years after the entry into force of the revised Directive. After this phase the collection target should be re-evaluated and increased.

In general the EEB supports this collection target methodology based on the products placed on the market in the previous two years as it covers replacement markets where new products replace old ones immediately. However, for countries with developing markets this target may be unrealistic. For a transitional period, for these Member States the target could be calculated for products placed on the market during the previous six years (instead of two).

Collection target: additional targets to drive separate collection of small appliances

While EEB supports an overall collection target for separately collected WEEE, we are still very concerned that:

- The target is still based on weight, which does not reflect the environmental impact of a product. Light appliances such as compact-fluorescent lamps have significant environmental impacts despite low overall weight.
- The Commission’s approach focused on white goods would not foster the collection of small appliances that are more likely to end up in the municipal waste stream. The 65% target can already easily be met by focusing on white goods.
- 65% is already being collected, but reflects only a low collection rate for small appliances.

Therefore, EEB recommends that, in addition to a general collection target of 65%, specific collection targets for Member States should be set at least for small appliances and lighting equipment. Furthermore, the Commission’s proposal does not take into account that heavy computer monitors and televisions are being replaced by lighter flat screens. Given the big differences in the size and weight of these products, the amount of collected items is not properly reflected in a weight statistic. Therefore EEB recommends setting a separate collection target for monitors and TV sets based on the number of items put on the market rather than weight.

Making producers responsible for all costs of collection

The Commission also proposes that Member States encourage producers to finance all costs for collection facilities for WEEE from private households (Article 12).

EEB supports the principle that producers should pay for full collection costs – including doorstep collection. IPR, the guiding principle of this Directive, means that producers have to internalise all end-of-life costs and collection should therefore not be excluded. However, the proposed approach leaves the decision regarding the extent of the costs covered by producer responsibility to Member States.

We therefore suggest that the financial responsibility of producers for all collection costs (and not only from municipal collection points onwards) be clearly established in Article 12.

Avoiding leakage from official collection routes

The Commission estimates that of the approximately 65% of EEE that is separately collected, less than half is treated and reported according to the requirements of the WEEE Directive. These conditions lead to improper treatment of WEEE inside the EU and high levels of illegal exports of WEEE to third party countries. EEB therefore welcomes the minimum monitoring requirements for shipments of WEEE as set forth in the new Annex I as this will help Member States to restrict the export of WEEE outside the EU.

Additionally, the WEEE Directive should clarify the responsibilities of stakeholders along the waste chain (i.e., municipalities, retailers, scrap dealers, brokers) to ensure that all collected WEEE is reported and subject to environmentally sound treatment. To this end, scrap dealers and brokers should be registered and obliged to report on their traded volumes of WEEE. Municipalities and retailers should only be allowed to sell WEEE to registered scrap dealers or brokers in order to ensure proper treatment.

Furthermore, the Commission proposes tackling the issue of leakage of WEEE from official collection routes by encouraging Member States to make producers financially responsible for the collection of WEEE throughout the whole waste chain, which EEB supports.

Improving the quality of collection systems and additional measures to facilitate collection

EEB fully supports the introduction of provisions ensuring the optimisation of collection and transport of WEEE for re-use and recycling and the confinement of hazardous substances in the new Article 6.

Furthermore, EEB would favour complementary measures to help Member States increase their collection rates and meet the targets. Such measures could be, for example, the introduction of a deposit-refund system where the amount of money is returned to consumers when they bring back their WEEE. In this case, a harmonised European approach is essential to avoid intra-European transport of WEEE from non-refund countries to refund countries.

We recommend that the Commission develop guidelines for Member States on these aspects.

Clarifying provisions on individual producer responsibility: guidelines for Member States and accreditation criteria for collective producer responsibility schemes

One of the guiding principles of the WEEE Directive is **Individual Producer Responsibility (IPR)**, which means that producers of EEE are made fully responsible for the end-of-life costs of their products as prescribed by Article 8.2 of the original Directive (Article 12.2 of the new Commission proposal). The intention – as clarified in recitals 12 and 20 of the current Directive¹ – is that the internalisation of these costs gives an incentive for producers to improve the design of their products in such a way that they are easier - and therefore more likely to be cheaper – to recycle. The crucial point for the functioning of this incentive system is that producers are only responsible for the end-of-life costs of their own products. This is not the case if producers share the burden of collecting and treating WEEE according to their market share.

Unfortunately – according to the Commission’s own assessment² – **8 Member States** (Bulgaria, Denmark, Finland, France, Greece, Latvia, Slovenia, UK) have **failed to transpose IPR** as outlined in the original Directive. An **additional 11 Member States** “**have not formulated their legal text in such a way that an explicit individual financial responsibility is assigned**”³. Partially as a result of this and also due to the lack of clarity of what IPR financing should mean in practice, IPR is still not implemented throughout Europe.

In this context, EEB fully supports maintaining the principle of IPR, which is proposed in Article 12.2. However, we are concerned that no additional steps are suggested to tackle the severe implementation deficits. In light of a very heterogenic legal environment in the different Member States, we call on the Commission to not only ensure that the principle of IPR is transposed – ensuring that producers should pay individually for their own WEEE costs and not continue to do so collectively – but also to develop IPR implementation guidelines for Member States.

In addition, we suggest the Commission takes this opportunity to propose **clear and enforceable criteria that can be checked to verify if IPR financing is being implemented in practice within WEEE compliance schemes** (individual or collective). These would ensure that no functional barriers to IPR are being inadvertently created and could be used to accredit compliance schemes. A preliminary list of criteria has been developed and published (on www.iprworks.org) by a broad coalition of NGO’s and companies, in which EEB is actively involved.

IPR accreditation criteria could be established in a new Annex to the Directive to ensure that:

- there are no de facto or contractual barriers to the implementation of IPR. In particular, contracts between producers and recycling systems should respect five key elements (as defined below) concerning the implementation of IPR.
- the system must assume its fair share of the burden of meeting the overall WEEE obligation as determined by collection and recycling targets, or must compensate for any shortfall through the transfer of WEEE or funds.
- the recycling and preparation activities undertaken by the system must meet the required environmental standards.

¹ **Recital 12:** “The establishment, by this Directive, of producer responsibility is one of the means of **encouraging the design** and production of electrical and electronic equipment which take into full account and facilitate their repair, possible upgrading, re-use, disassembly and recycling.”

Recital 20: “In order to give maximum effect to the concept of producer responsibility, each producer should be responsible for financing the management of the waste from his own products. The producer should be able to choose to fulfill this obligation either individually or by joining a collective scheme. Each producer should, when placing a product on the market, provide a financial guarantee to prevent costs for the management of WEEE from orphan products from falling on society or the remaining producers.”

² Ökopol (2007) The Producer Responsibility Principle of the WEEE Directive, p. V

³ Ibid.

Key elements necessary to ensure that IPR is feasible in a scheme include the following:

1. For WEEE placed on the market after 13 August 2005, producers should be responsible for financing the recycling of their own products (i.e. not their market share).
2. Appropriate guarantees for the financing of the management of WEEE by each individual producer should be provided. The guarantee must:
 - Be robust and ensured for the long-term, i.e. it will be available when the product at its end-of-life and is of a sufficient level to secure future recycling costs. The guarantee must be sufficient to cover the total future recycling obligation of each producer.
 - Be able to reflect a differentiated cost per brand, i.e. differences between products such as design, durability or other qualities that influence the recycling costs.
 - Allow flexibility for mobility, i.e. allow for a producer to change the recycling system or compliance solution at any time without 'losing' the guarantees built up so far and without being forced to rebuild guarantees for products put on the market before the change.
 - Give producers the freedom to choose whether they provide a guarantee individually or contribute to the guarantee organised by a collective system.
3. Improved product design addressing end-of-life environmental impacts should be incentivised and rewarded.
4. Procedures that assign financial responsibility to producers according to the treatment and recycling costs of their own returned products should be established.
5. A transparent and fair mechanism for allocating common costs between all producers, for example any costs associated with implementing IPR such as return-share sampling (see explanation in box) or design-related cost differentiation, are shared by all participants.

Box: Different approaches for assigning financial responsibility to producers

Note: There are a variety of ways in which recycling systems can assign financial responsibility to producers according to the treatment and recycling costs of their own returned products. Recycling systems should have the flexibility to select from the following approaches:

- **Producers Credited for Individual Collection:** Producers are able to establish their own systems for WEEE collection and recycling and deduct the costs from their obligations set by the collective recycling system. This is a preliminary step towards a fuller implementation of IPR but does not in itself constitute IPR.
- **Return-Share Sampling:** Under this system financing for waste is based on the proportion of products in the waste returned, calculated by sampling the waste stream. Random sampling of the collection containers enables the proportion of each brand in each type of waste stream to be calculated. The return share system would therefore be a truer representation of a producer's waste responsibility, compared to financing based on the market share of present sales.
- **Return Share System based on Product Identification:** Under this system financing for waste is based on the proportion of products in the waste returned, calculated by a full brand count. This can be achieved by a physical brand count of all items or through systems based upon bar codes or Radio Frequency Identification (RFID) tags.
- **IPR based on Brand Responsibility:** Producers are only responsible for their own brands within the waste stream, which can be achieved in two ways. First, individual brands can be segregated from the waste stream using physical segregation or detection technology such as RFID. Alternatively, producers can develop individual recycling systems and collect their own products directly from end users. For example the PC recycling system in Japan utilises the postal system to enable producers branded products to be sent directly to the producers' own recycling plants.

No more visible fees

So-called “visible fees”, reflecting end-of life costs (collection, treatment and disposal) arising from producer financial responsibility are used in some countries. Because such fees are shown separately from the price of the appliance at the time of purchase, they tend to contradict the principle of internalisation of end-of-life costs in the price of appliances. In addition, many stakeholders deliberately interpret this provision as an opportunity for imposing a **flat and undifferentiated fee** to all producers. With such a system, a flat fee for end-of-life costs is given to all products within the same product group in each country (regardless of the characteristics of a product). Therefore, there is **no incentive for producers to compete for improving the recyclability and durability of their products**. This seriously risks undermining the implementation of IPR.

In the current Directive, producers are allowed to use these fees exclusively for historical WEEE and only for a transitional period (until 2013). Unfortunately, the new Article 12 suggests extending indefinitely the possibility to use such visible fees for all type of WEEE (historical and new).

The Commission justifies this extension with the need to favour smarter consumption and green public procurement (new Recital 20). However, the use of visible fees does not bring any added value for consumers. These fees are not intended to induce any particular consumer behaviour. Other type of consumer information would be more useful to develop (reusability, recyclability, recycled material content) to induce sustainable consumption and end-of-life management. In other words, IPR should not be confused with raising public awareness.

EEB therefore firmly opposes any extension of the use of visible fees.

Driving Re-Use and Recycling and better treatment of WEEE

Reflecting the waste hierarchy

EEB is concerned that the Commission is proposing to delete the reference to the waste hierarchy and the priority given to re-use and recycling in Article 1 on subject matters. The “waste hierarchy” as established by the new Waste Framework Directive (i.e. prevention, preparing for re-use, recycling, recovery and disposal) is one of the cornerstones of EU waste legislation and should clearly be enshrined in the WEEE Directive.

While EEB accepts that definitions contained within the WEEE Directive are aligned with the Waste Framework Directive, the reclassification of some municipal waste incinerators as “recovery operations” will have negative consequences. Therefore, EEB no longer supports establishing recovery targets for specific waste streams in directives and suggests deleting them in the WEEE Directive while maintaining high targets for recycling and re-use.

Furthermore, we are highly concerned that the Commission now proposes replacing the specific reference to recycling with the broader concept of “recovery” in Article 4 of the WEEE directive (on product design). EEB does not support an obligation for Member States to encourage design for recovery, as this would include facilitating design for incineration. This modification has been wrongly labelled as a non-substantive change in the recast procedure. The original wording of the WEEE Directive should be reinstated.

Recycling targets calculated on output rather than input

While EEB welcomes the slight increase in recycling targets (actually, the combined re-use and recycling target) and the inclusion of category 8 appliances (medical devices) in the WEEE directive revision, we are concerned that the overall focus is put purely on the input side of the recycling process. The recycling target of the Commission’s proposal refers to the amount of separately collected WEEE *sent to* recycling facilities but there are no requirements or targets for output.

Therefore, the recycling sector should be obliged to report on outputs to their Member State, i.e. the type and amount of materials derived from WEEE. Such data will allow better monitoring of material flows as well as the future introduction of specific output targets for recycling.

Dedicated drivers for re-use

The manufacturing of electrical and electronic appliances has a significant impact on resource and energy use. In such a context, EEB welcomes the Commission's willingness to encourage re-use and repairing activities to reduce the overall ecological impact of electronic appliances.

However, EEB is disappointed that no specific drivers for re-use are proposed since the Commission only proposes a 5% increase of the combined recycling and re-use target to accommodate re-use. While we support ambitious targets for recycling, the combined targets proposed by the Commission could be met purely by recycling activities.

We therefore recommend that the Directive explicitly require a minimum 5% target for re-use. Additionally, the directive could encourage Member States to include reuse activities in national programmes on waste prevention which have to be prepared by 2013 as laid down in the Waste Framework Directive. This would give Member States the flexibility to set more ambitious targets and constitute an appropriate driver to encourage re-use.

To further support the re-use of WEEE, the EEB recommends giving obligatory, upstream access for the re-use sector to all "first" collection sites to select WEEE that could meet the criteria for being reused, refurbished or repaired. The lack of early and guaranteed access to the WEEE-stream by reuse networks is currently undermining re-use activities. However, we recommend that privileged access to WEEE should only be granted to audited, approved or certified reuse centres. This would drive up confidence in reuse systems while preventing the abusive use of "reuse" qualification to illegally ship WEEE to third party countries. It will also keep certain recyclers wrongly labelled as re-use actors from "cherry picking" the appliances with the most precious materials.

Strong treatment requirements – no shredding!

The EEB supports that no changes to the treatment requirements (Annex II) are made in the Commission's proposal.

However, the Commission proposes a new definition for "remove" in Article 3 of the proposal⁴. This definition is important as it relates to Annex II of the Directive listing a number of components that need to be removed before further treatment.

EEB is concerned that the proposed wording would allow untreated WEEE to be shredded. We strongly call for an additional provision that excludes shredding as a method of "de-pollution".

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⁴"Remove means manual, mechanical, chemical or metallurgic handling with the result that hazardous substances, preparations and components are contained as an identifiable stream or identifiable part of a stream at the end of the treatment process. As substance, preparation or component is identifiable if it can be monitored to prove environmentally safe treatment."