

Brussels, 28 May 2007

Joint industry position paper on the review of Directive 2002/96/EC (WEEE Directive)

1 Introduction

AeA Europe, EICTA and JBCE are three Associations representing a large number of global high-tech companies in Europe. During the implementation of the WEEE Directive into the national law we have been continuously offering support to the Member States and the European Commission on some of the key issues of the Directive.

With the upcoming revision of the WEEE Directive we believe its time to summarize all previous positions into one position paper that covers all the aspects that AeA Europe, EICTA and JBCE believe will be relevant for the revision of the WEEE Directive.

Whilst the following chapter will discuss the following issues in detail this introduction tries to highlight the most important aspects in this paper:

- **Legal Basis:** During the implementation of the WEEE Directive into national law there have been many problems with differing implementations in the member states. These differences are partly caused by ambiguous definitions in the Directive but also partly by the freedom in implementation of the Member States. We would like to propose a dual legal basis for the Directive where article 95 of the Treaty should form the basis for those articles which affect internal market aspects.
- **Harmonization:** under the WEEE Directive producers are required to follow the 27 national implementations of the WEEE Directive. Differences in these implementations are putting an additional burden on producers without any environmental benefit. During the revision of the WEEE Directive attention should be paid ensuring harmonized requirements in Europe. Examples of difficulties are:
 - Differences in the Scope of the Directive,
 - Different definitions of weight,
 - Criteria to discern “WEEE from private households” from “WEEE from user other than private households”,
 - Different Segmentation by Type of Equipment (ToE),
 - Differences in content and frequency of reporting,
 - Registration of foreign companies (within the EU).
- **Roles of stakeholders:** Although the current WEEE Directive defines the roles of responsibilities involved in the collection process there has been a lot of discussion during the implementation of the Directive on the details of these responsibilities. The revision of the WEEE Directive should take into account these unclear points and should define in more detail the responsibilities of all stakeholders involved in the collection of WEEE.
- **Selective treatment:** The Annex II of the WEEE Directive defines as a minimum a list of substances, preparations and components that have to be removed from any separately collected WEEE. The Annex sets specific mandatory steps for the end-of-life

treatment of a very diverse product group, without delivering any significant environmental benefits. Annex II should be deleted in its present form. A set of environmental objectives for the treatment operations can solve the concern about hazardous materials getting substandard treatment.

- **Finance of WEEE treatment:** During the review of the Directive there is an opportunity to strengthen the freedom of choice for financing of future waste. In the implementation of article 8, it should be made mandatory for Member States to give producers the option to choose between Individual or collective solutions based on their product portfolio and business models used.
- **Reuse:** Producers welcome the intent of the WEEE Directive to encourage greater reuse of electronic products. However we believe that attempting to measure reuse is very difficult and therefore inaccurate. Setting targets for reuse is consequently meaningless. Next to these practical problems there are also several legislative requirements that will impact the reuse of WEEE. Examples of such problems are: Storage requirements, potential trans-boundary movement across the Member States and data privacy requirements.

2 Content

1	Introduction.....	1
2	Content	2
3	Legal basis.....	2
4	Scope and definition of EEE.....	4
5	Definition of Producer.....	6
6	Definition of 'WEEE from private households'	8
7	Start of producer obligations	9
8	Product design.....	10
9	Roles and Responsibilities in Separate Collection of WEEE from Private House-holds	10
10	Annex II: Selective treatment	12
11	Finance Household WEEE	12
12	Information to users.....	13
13	Information for treatment facilities	14
14	Information and reporting	14
15	Role of Reuse	16

3 Legal basis

During the implementation of the WEEE Directive into national law there have been many problems with differing implementations in the member states. These differences are partly caused by ambiguous definitions in the Directive but also partly by the freedom in implementation of the Member States. This paragraph will focus on the freedom during implementation and the related problems.

The WEEE Directive relates to the environment, which is dealt with mainly on a national basis in line with Article 175 of the Treaty. Although the WEEE Directive relates to the environment there are a number of elements contained in the WEEE Directive that are critical to preserve

the internal market aspects. We believe that for these articles the legal basis should be Article 95.

We do however understand that for several other articles of the Directive article 175 of the treaty is more appropriate and therefore we would like to advocate a dual legal basis for the revised WEEE Directive in which articles that affect the internal market aspects are covered by Article 95 of the treaty.

In the WEEE Directive, the following clauses should have article 95 as legal basis.

Table 1 Possible WEEE Directive articles under art 95 of the Treaty

Article	Title	Comments
2	Scope	The scope of the WEEE Directive is the basis of the producer obligations. A difference in scope in the Member States will affect the internal market. For instance product marking might not be required in country A where the product is produced but is required in country B where the product is exported to.
3	Definitions	Differences in definitions will cause several problems. Some of these problems are related to the administrative burden on industry but differences in for instance the definition of producer could create barriers to intra-community trade. For more details see the different paragraphs of this document that discuss the definitions in more detail.
4	Product design	Freedom for member states to introduce national design requirements will immediately affect the internal market. All product related matters should be dealt with at Community level.
10	Information for users	The Directive should allow for a common marking requirement, and possible use of symbols in manuals for information to users. National marking requirements will create barriers to intra-community trade
11	Information for treatment facilities	Similar to article 10 of the Directive, the information requirements for treatment facilities should be harmonized across the EU. Different information requirements between Member States will only lead to an increased administrative burden with no environmental gain.
12	Information and reporting	Different reporting systems are costly and serve no purposes. Since the Commission expects uniform reporting from member States, industry should also be allowed to use a uniform reporting method. Harmonised EU registration eliminates barriers to free trade in the internal market.

More details on the reasoning for article 95 can be found in the different paragraphs of this paper.

4 Scope and definition of EEE

We are concerned that some Member States have chosen to adopt the widest scope possible for the WEEE Directive and not to limit themselves to the categories listed in Annex I A, or to those that are reasonably close to the products listed in Annex I B.

The Commission should clarify that WEEE only covers finished products. Components, sub-assemblies and consumables (such as semi-conductors, medical devices, cables, etc.), which are part of electrical and electronic equipment (EEE) and yet do not have a direct function on their own, should not be considered as EEE within the scope of the Directive. Were these products considered as EEE, we could find ourselves in a position where goods need to be registered twice.

An example of the problems companies are currently facing relates to the Directive's lacking definition of 'fixed installations', which by their nature, should not be covered by the WEEE Directive. Industry believes that equipment which is permanently integrated into a building, and which is not removed by temporary users, should be explicitly exempted from the scope of WEEE. However, several years after the Directive's entry into force, we still have no guidelines on fixed installations and therefore, Member States have adopted different interpretations on the scope of WEEE.

Specific Example: Semiconductor components

The applicability of the WEEE Directive to a particular product depends on whether that product is considered to be "electrical and electronic equipment (EEE)" as defined in Article 3 of the Directive.

Current state:

The applicability of the Directive to component products is unclear in some Member States. Further clarification is needed in Article 2 or 3 regarding the applicability of the Directive to component products. Some Member States are using criteria such as how a component product is sold in order to determine whether a component product is within the scope of the Directive. This practice conflicts with the intent of the Directive which focuses on the characteristics of a particular product to determine whether it is in scope.

Problem statement:

The definition of electrical and electronic equipment or EEE in article 3(a) is unclear and needs to be redefined. Semiconductor components and products are not in the scope of the WEEE Directive and the national implementation legislation of this Directive. Examples of such component products include development boards, motherboards, memory cards and modules, processors and microprocessor cards, graphic cards, PC plug-in cards, network interface cards, internal drives, power supply units, and electromechanical components.

Main supporting arguments:

Component products are not EEE and the concept of EEE shall be interpreted according to the Commission EMC guidelines as applying only to equipment having a direct function (EC FAQ:

finished products are defined as 'those with a direct function'). Despite certain comments in the EC FAQ that suggest that certain component products have a direct function (e.g., microprocessors and motherboards), such products have no direct function until they are incorporated into a final product. The intent of the WEEE Directive is to improve the management and recycling of WEEE. Such goals are very different from those of the EMC guidelines and can only be accomplished at the final product level.

The language of the Directive supports this approach. Article 3(b) defines components that are part of the product at the time of discarding as WEEE. Although not directly stated, this language implies that components would not be subject to the requirements of the Directive until they are incorporated into a final product. The language from the original proposal for the WEEE Directive more clearly expressed this intent as follows: "The provisions regarding waste electrical and electronic equipment apply **only** to components, sub-assemblies and consumables **when** these materials are part of the product at the time of discarding. (Emphasis added)" (See p.28, Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment/Proposal for a Directive of the European of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment, June 13 2000).

Proposed Solution:

Revise the EC FAQ to indicate that component products are not within the scope of the Directive unless and until they are incorporated into a final functional product. Add clarifying language in Article 2 or 3 that the Directive applies only to final products and revise the definition of EEE to indicate that **EEE means finished equipment (final end product) with a direct function** that is dependant on electric currents.

Example 1: A consumer purchases a desktop computer from a computer manufacturer. At some point, the consumer decides to upgrade the computer and purchases a new microprocessor and additional memory each branded by a different company. Under the position of some Member States, the old microprocessor and old memory would not be labeled since they were sold to a computer manufacturer who manufactured and registered the desktop unit itself; however, the new microprocessor and new memory would need to be labeled/registered because such components presumably have some "direct/independent function." This makes no sense. Whether a particular component is in scope should not be dependent on how the product is sold.

Now the consumer is ready to dispose of the computer described above and takes the desktop box to a recycling center. Is the entire weight of this unit attributed to original computer manufacturer or is the recycler supposed to open up the box to see if there are any individually-labeled components ? Are the component manufacturers responsible for the recycling costs for the new processor and memory, but not the old motherboard since the motherboard was part of the original unit ?

Example 2: A consumer decides to build a computer and purchases all of the components, including a generic chassis, through a distributor. There is no marking or branding on the chassis. What happens when this unit enters the recycling system ? Are individual components attributed to each component manufacturer ? What about components that are

not labeled because they do not have any independent function even under the broadest concept of direct/independent function.

Example 3: Same as Example 2 except the chassis manufacturer has its brand name on the chassis. Same questions as above regarding allocating recycling costs.

Specific Example: Medical equipment

The interpretation of the scope of category 8 by WEEE registration bodies in EU Member States is not consistent. Many companies do not know in which category their product falls.

Useful and recognised definitions of "medical devices" are given in the Active Implanted Medical Device Directive (90/385/EEC), the Medical Devices Directive (93/42/EEC) and the in-vitro medical Devices Directive (98/79/EC). Producers are familiar with these Directives. The WEEE Directive does not refer to any of these three Medical Device Directives to define category 8 "Medical Devices". Industry suggests to define WEEE Category 8 as "Equipment that meets Article 3(a) of the RoHS Directive AND is within the scope of Directives 90/385/EEC, 93/42/EEC or 98/79/EC".

Furthermore the meaning of "infected products" in the title for Category 8 in the Annex IA and IB is unclear. Industry suggests to use the term "microbial contaminated products" instead of "infected products".

The current list for Category 8 "medical devices" in the Annex to the Directive is unclear because not all the listed "products" are real medical devices, such as e.g. Cardiology, Nuclear medicine. Industry suggests to use the names defined by the Global Medical Device Nomenclature (GMDN) system.

5 Definition of Producer

According to the Directive 'Producer' means any person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (1):

- (i) manufactures and sells electrical and electronic equipment under his own brand,
- (ii) resells under his own brand equipment produced by other suppliers, a reseller not being regarded as the 'producer' if the brand of the producer appears on the equipment, as provided for in subpoint (i), or
- (iii) imports or exports electrical and electronic equipment on a professional basis into a Member State.

Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a 'producer' unless he also acts as a producer within the meaning of subpoints (i) to (iii).

For comparison, please also note the definition of producer in the revised Batteries Directive: "producer" means any person in a Member State that, irrespective of the selling technique

used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts **1**, places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the territory of that Member State on a professional basis.

From these definitions it is clear that the Member States need to be able to identify a natural or legal person in their national territory who can be held responsible for fulfilling the legal requirements of the WEEE Directive.

Current Producer status

There is some uncertainty with regards to the definition of the producer. This has become most apparent during the implementation of the WEEE Directive in national legislation and the obligations on producers to register. In some Member States a company that is not the producer in that Member State can assume the producer responsibility on behalf of its customers (e.g. the local distributors/reseller) and register from abroad. In other Member States, national registers are restricted to companies legally established within the Member State's territory only. This creates problems for larger companies, who wish to fulfill the legal obligations for their distributors in countries where the company does not have a legal presence. More importantly, it creates problems for SMEs which want to sell to consumers in the European Union, but cannot afford to create legal entities in each Member State. The cost of proper registration, i.e. with a locally registered legal entity, can be largely disproportional to the potential turnover or profit. This simply limits the possibility to register and comply effectively, therefore create barriers to intra-community trade.

Solution required

We believe all national registers should be open for registration to any producer legally established within EU, subject of course to the same obligations as any company established in the Member State. Clearly, legal provisions must also be in place to allow Member States to pursue legal action against companies which have committed to fulfil the legal obligations in their territory, but do not have a legal presence (e.g. using similar approaches to the general product Safety Directive or allowing producers to discharge their obligations to local legal representatives or the Compliance Schemes).

We would urge the Commission to investigate on which legal basis certain Member States allow companies from abroad to fulfill the producer obligations in their territory, and see if it can encourage all Member States to adopt a similar approach. We would prefer if such a solution is possible through non-legislative measures. However, if a revision of the producer definition in the WEEE Directive is required, the Commission should do so.

Proposal : amended Spanish definition, in order to give flexibility to Industry

The Spanish Royal Decree adds the following to the WEEE Directive definition:

'The distributor will not be considered as a manufacturer if the brand of the manufacturer appears on the appliances, when the owner of this brand is registered on the state Industrial Establishments Register to which the first additional provision refers.

This actually gives the ability for brand owners to take over the liability of importers on national territory (distributors). The goal should be to provide ability for any manufacturer to indeed register to National Registries from outside Member State AND provide flexibility for brand owner to take its brand obligation as a whole for sales on a national territory under contractual agreement with his distributors.

6 Definition of WEEE from private households'

The WEEE Directive foresees different financing mechanisms for WEEE from private households (art. 8, or commonly referred to as "B2C") and WEEE from users other than private households (art. 9, or commonly referred to as "B2B"). In order to achieve full compliance it is therefore essential for producers to know whether their products classify as "B2C" or "B2B", and for compliance schemes, registers and authorities to have the same understanding.

Unfortunately there is a lot of confusion as to the definition of "B2B". Registers and compliance schemes use very different definitions based on a variety of criteria. This means that for every register or compliance scheme producers need to verify what the criteria for B2B and B2C are and this leads to a lot of unnecessary administrative work. We would prefer to have more guidance on a European level on the definition of WEEE from private households and WEEE from users other than private households. This would lead to a reduction of the amount of administrative work involved in complying with the WEEE Directive and it would allow producers to determine during the product launch under which financing regime the product would fall in all Member States.

Possible criteria to differentiate WEEE from users other than private households from WEEE from private households could be:

1. Evidence in the form of signed contract between the business user and the Producer (or party representing the Producer e.g. reseller under contract), that clearly assigns responsibilities for End of life collection and treatment costs, ensuring that the EEE will not be disposed of through municipal waste streams, or
2. EEE that due to its features is not used in private households and that will therefore not be disposed of through municipal waste streams. This criterion should be supported by either one or a combination of the following criteria:
 - a) EEE that is operated by specialised software as for example an operating system or system environment requiring a special configuration for professional use.
 - b) EEE operating at a voltage or having a power consumption outside of the range available in private households
 - c) EEE requiring professional licenses to operate, e.g. Base Stations requiring the license of the telecommunication regulator

- d) EEE of large size or weight requiring to be installed and de-installed or transported by specialists
- e) EEE which requires a professional environment and / or professional education (e.g. medical X-ray equipment)
- f) EEE in category 10 of Annex 1A
- g) EEE outside of the scope of the General Product Safety Directive for Consumer products

7 Start of producer obligations

The definition of put on the market in the WEEE Directive is used for two purposes; firstly it is used for product related articles such as the marking obligations and secondly it is used to define the moment when the collection and recycling responsibility starts.

For the product related requirements of the WEEE Directive, a European definition of put on the Market is essential to ensure free movement of goods on the community market. In the framework of the revision of the New Approach, We call on the European Commission to provide a common understanding of the definition of 'placing a product on the Community market' and 'making it available' to its users and consumers. Our understanding of these definitions is explained in a separate position paper.

Under the WEEE Directive producers are responsible for collection and environmentally sound treatment of EEE put on the market after 13 August 2005. The Interpretation of Put on the market in this respect often differs from the European definition of the New Approach. The term 'put on the market' is not defined in the WEEE Directive and even though the exact interpretation and timing of put on the market for the WEEE Directive differs from country to country, they all refer to the national market. Industry understands that a national approach is necessary for an effective enforcement on national level.

Adopting a 'put on the market' definition that is referring to the Community market, for the collection and recycling obligations under WEEE, confronts companies that use a centralized European warehouse with great difficulties. They would have to report all of their products to a recycling scheme in the country where the products are firstly 'put on the Community market'. When exporting products to other Member States this results in extra administrative burdens (deducting exported goods from earlier declaration, reporting products in new country, etc.) for both companies and reporting offices.

For industry the most relevant question in respect to the collection and recycling obligations is at what point in time they need to report products that they have put on the market. In order to avoid unnecessary administrative work a clear definition of the timing of reporting is required.

Industry proposes to include a harmonized approach for reporting and registration in the revised WEEE Directive. Common practice is to report products not when they clear customs (i.e. are placed on the national market), but when they are actually moved from the producers

warehouse to the next step in the distribution chain. This would be the moment that a manufacturer or importer needs to register at the WEEE register as required by article 12 of the Directive.

This harmonized approach for reporting and registration would allow for a European definition of put on the market for the product related requirements (i.e. follow the New Approach definitions)

8 Product design

By the adoption of Directive 2005/32/EC on 6 July 2005, establishing a framework for the setting of ecodesign requirements for energy-using products the European Commission now has a tool to develop ecodesign requirements for amongst others EEE. Via the impact analysis that is required under the EuP Directive all environmental impacts of the product's life cycle are taken into account and via a proper assessment of the improvement potential the implementing measures of the EuP Directive will lead to justified ecodesign requirements.

One of the main advantages of the EuP Directive is that it is based on art 95 of the Treaty. Via article 95 of the Treaty there will be a harmonized implementation of the implementing measures of the Directive. This harmonized implementation will ensure that free movement of goods on the community market is guaranteed.

As the WEEE Directive is based on article 175 of the Treaty it only sets a minimum requirement and it allows for freedom during the implementation into national law. This freedom of implementation is well justified as the differences in waste management in the Member States will require a different implementation of the Directive. There are however articles, such as Article 4, of the current WEEE Directive where this freedom of implementation may hamper the free movement of goods on the community market. Under art 4 Member States could implement additional eco design requirement and these differing product related requirements could be lead to problems on the internal market.

Taking into account that article 4 of the WEEE Directive could lead to problems on the internal market and the fact that the new EuP Directive is specifically develop to set eco design requirements We would propose to delete article 4 of the current WEEE Directive.

9 Roles and Responsibilities in Separate Collection of WEEE from Private House-holds

Although the current WEEE Directive defines the roles of responsibilities involved in the collection process there has been a lot of discussion during the implementation of the Directive on the details of these responsibilities. The revision of the WEEE Directive should take into account these unclear points and should define in more detail the responsibilities of all stakeholders involved in the collection of WEEE

Users:

Users of electrical and electronic equipment from private households should return WEEE to the appropriate collection points at no cost. This could either be a Municipality Collection Points. In addition it could be via a distributor when a replacement purchase, on a one by one basis, took place.

Municipalities:

Municipalities shall ensure the availability and accessibility of the necessary collection points, taking account in particular the population density. There has been significant discussion of the roles of producers in this collection process, We are of the opinion that organizing and financing the collection of WEEE should remain a responsibility of the municipalities as it is their core expertise:

- Municipalities or local governments are the main contact point for any person when they are faced with any waste issue. This is not limited to WEEE but these responsibilities range from household waste to more complex chemical waste disposal. As municipalities and local governments have the experience and are recognized as waste collection authorities they would be most successful in achieving high collection volumes of WEEE
- In some countries, like Spain, WEEE is described as Municipal Solid Waste (MSW), and as required by law, MSW can be only managed by Municipalities. So, Municipalities are the only responsible party for providing and financing the collection service of WEEE from private house-holds to Municipal collection points and to organize these collection points .
- Collection of waste has no direct relation to the design of a product; this means that by changing the design of a product a producer will not be able to influence the cost of operating the collection point. Extended Producer Responsibility legislation should only transfer obligations to producers when the producer actually can have an influence on the cost. In the case of the WEEE Directive municipalities should finance and operate the collection points as a transfer of these cost to the producers would only lead to an increased burden on industry without any environmental improvement
- Duplicating roles in the collection process is not going to improve the service, quite the contrary. Municipalities should maintain their roles and manage and financing accordingly.

Member States:

As explained above in the section on municipalities the responsibility for collection of WEEE should remain at municipalities and local governments. The question on responsibility of the overall collection targets, as set in article 5 of the Directive, should therefore be addressed at the Member States. Only Member States through their local governments and municipalities can influence the actual collection results.

The success of meeting the collection targets depends on several aspects, ranging from availability of collection points to the volume of WEEE being generated by the end user. An important aspect in meeting the collection targets is linked to the awareness of consumers. As meeting the collection targets can only be a responsibility of the Member State, the responsibility for these awareness campaigns can only be an obligation of the Member States as well.

Distributors:

When distributors supply a new product, distributors shall be responsible for ensuring that such waste can be returned to the distributor on a one-to-one basis as long as the equipment is of equivalent type and has fulfilled the same functions as the supplied equipment.

Big distributors should have a role in the process and negotiate with producers their financial responsibilities, in order to establish appropriate take back system. For example: Distributors to pay the WEEE shipment to Producers Collection Points or Distributors to establish Collection points where producers will have to collect the WEEE.

Producers:

Separately collected WEEE needs to undergo environmental sound treatment and this is part of the producers' obligation. Producers are responsible to finance the collection from municipal collection points. After the collection of WEEE, producers need to ensure that the WEEE is properly treated in accordance with the legislation.

10 Annex II: Selective treatment

The Annex II defines as a minimum a list of substances, preparations and components that have to be removed from any separately collected WEEE. The annex sets specific mandatory steps for the end-of-life treatment of a very diverse product group, without delivering any significant environmental benefits. The benefits from these mandatory steps, such as for example the obligation to remove printed wiring boards from mobile phones are not evident even with the currently used recycling technologies, and additionally do not encourage further improvements in the recycling technologies.

Targeting for removal a specific component by the function it performs, even with the aim of isolating a certain material, does not take into consideration developments in technology and subsequent changes in material content, which may make the required removal obligations completely redundant.

Manufacturers of Electrical and Electronic equipment and recyclers need to be able to apply best available treatment technologies and to explore the economies of scale of the end-of-life treatment. Too detailed regulation slows down the development of recovery / recycling practices and technologies.

Annex II should be deleted in its present form. A set of environmental objectives for the treatment operations can solve the concern about hazardous materials getting substandard treatment.

11 Finance household WEEE

Individual Producer Responsibility

Article 8 of the WEEE Directive obliges producers of electrical and electronic equipment to meet the costs of recycling their products at the end of their products' life. The producer can choose to fulfil this obligation either individually (IPR) or by joining a collective scheme.

Currently, most Member States have implemented or propose to implement a system of collective responsibility for waste, attributed on the basis of a company's market share rather than making each company responsible for their products when they are actually returned. This will be the case for both historic waste (products put on the market before the Directive came into force) and for all future EEE waste.

While recognizing that collective responsibility is appropriate for handling all historic waste (i.e. waste that was placed on the market before the Directive came into force), producers should be entitled to choose either the collective or individual approach. In the latter one, each producer will be liable for financing the treatment and recycling of their own waste products.

Although there are still several practical problems with the implementation of IPR, many producers are investigating potential IPR solutions and it could well be that in the near future producers may want to set up IPR systems. Therefore, EEE industry calls on the European Commission and the Member States to ensure that the freedom of choice between Individual Producer Responsibility and collective solutions is properly implemented in national WEEE legislation.

During the review of the Directive there is an opportunity to strengthen the freedom of choice for IPR. In the implementation of article 8, it should be made mandatory for Member States to give producers the option to choose between individual or collective solutions based on their product portfolio and business models used.

A first step towards IPR would be the possibility to allow Producers to collect products, of an equivalent type as sold by the producer, directly from end users. It should be possible to deduct these volumes from the obligation that the companies has under its collective collection system.

Guarantee

It is not beneficial for the EU economy when industry has to put a large financial reserve aside, which cannot be used actively to invest in e.g. sustainable growth or innovations. In the current text of the WEEE Directive art. 8.2, the producer can choose to fulfil the obligation either individually or by joining a collective scheme. Three options are given to the producer on how to provide a guarantee showing that the management of all WEEE will be financed.

It should be unambiguous that the producer has the choice out of these options and that the obligation is not accumulative; e.g. the producer joining an appropriate scheme should not be forced to make additional provisions.

12 Information to users

Marking according to Article 10 (3) has no implications as regards the obligations of the producer. Its only aim is to inform the users that the equipment should not be disposed of together with municipal waste. For equipment which does not end up in municipal or retailers' waste streams, this marking would bring no additional information to the user. Some Member States have, in their transposition process, been more specific in their wording than the European Directive . Their national legislation clearly indicates that marking as required by

Directive in Article 10 (3) shall only apply to EEE which can end up in collection points operated by municipalities or by retailers; in other words, WEEE from private households as defined in Article 3 (k) of the Directive.

The EEE Industry proposes that marking according to Article 10(3) of the WEEE Directive shall be mandatory for all equipment that may end up in municipal waste streams, i.e. WEEE from private households. Simultaneously, the use of this marking shall be neither required nor forbidden for WEEE from users other than private households, especially as the crossed-out wheeled bin with additional black bar is part of one of Cenelec's standard EN 50419 options to mark products according to Article 11 of the WEEE Directive.

13 Information for treatment facilities

If based under article 95 of the European Treaty and harmonized, Article 11 should not get into technical details to ensure best available technologies can be used and that evolutions are not hindered by the Directive text, similarly with the remark made above on Article 6 / Annex II.

14 Information and reporting

Registers of Producers in response to requirements of Article 12 of WEEE Directive are already in operation in many Member States (e.g. Portugal, Ireland, Austria, Germany, Spain, etc); while in others are contemplated by enacted or pending legislation (e.g. France, Italy, Poland, UK). Additionally some other countries do not have a Register per se, but use as an equivalent the participation in a national take-back scheme (Belgium and The Netherlands).

Registration is in most of the cases is a pre-requisite to make business at Member State level and possibility to Register is limited – in most of the cases – to (i) Companies that place the product at MS and it is also interpreted that (ii) Companies must be resident at MS. This regime of compartmentalized National Registers has become **a de-facto trade barrier** making business and intra-community trade more complex for multinational companies but almost impossible for SMEs that are required to set up local companies or appoint local representatives at the different MSs where they want to sell their products. More details on the issue of the producer definition can be found in item 5 of this paper.

Further to this, Producers are facing different requirements on similar issues at different MSs that make business more cumbersome. Many of these points have already been discussed in other areas of this paper in more detail but in this section all points will be summarized to give an overview of the problem at hand. Examples of difficulties are:

- Different definitions of weight
- Criteria to discern “WEEE from private households” from “WEEE from user other than private households”
- Different Segmentation by Type of Equipment (ToE) for the calculation of historical responsibilities.
- Differences in content and frequency of reporting
- Registration of foreign companies (within the EU)

Definition of weight

Article 12.1 of the WEEE Directive foresees that “Member States shall draw up a register of producers and collect information [...] on the quantities [...] put on the market, collected [...] by weight [...]”. In many of the Member States producers are now required to report sales in weight. The definition of weight however varies from one country to another. This constitutes an unnecessary administrative burden for producers.

We therefore would welcome one single definition of weight. We believe that weight should be defined as *the weight of the unpacked product including all electrical & electronic accessories, but excluding batteries, non-electronic / electrical accessories, consumables, documentation and packaging that normally accompany the standard boxed product.*

Criteria to discern “WEEE from private households” from “WEEE from user other than private households”

see item 6 of this paper.

Types of equipment

In implementing the requirements of the national transpositions of the WEEE Directive, registers ask producers to report their sales. This reporting has to be done in given product categories or “types of equipment”. From one country to another these types of equipment vary strongly in their classifications. This leads to classifications that are not compatible between countries and thus to a highly undesirable administrative burden.

We believe that stakeholders should strive for a situation in which the registers use the same (as simple as possible) classification of types of equipment, as well as common guidelines for ambiguous cases of this classification. This would not only simplify compliance for producers but would also increase the quality of the information and therefore facilitate the reporting of coherent and comparable data from Member States to the Commission. We are currently assessing a proposal of types of equipment for which it is concerned.

Content and frequency of reporting

Our industry is faced with registers requiring the reporting of varying types of information and data. Furthermore the frequency in which producers have to report their sales to registers varies from one country to another. We are then faced with unnecessary levels of complexity in their IT systems and unnecessary administrative burden.

We would like to see that all registers use the same set of data or registration form, as aligned as possible with the data reporting requirements from Member States to the Commission, and the same reporting frequency. The reporting frequency should be chosen so as to minimize workload but also take into account seasonality in sales and be high enough to ‘capture’ temporary market entrants. A quarterly reporting seems to fulfill all these criteria.

Registration of foreign companies within the EU

See item 6 of this paper.

Proposed way forward towards more harmonisation

We recommend to strongly encourage every step towards a harmonised EU registration process leading to harmonised national requirements and procedures, or even a single EU-

wide registration body. The national registers should at least follow a coordinated approach towards registration and should regularly exchange their data.

We believe that it would be both appropriate and essential to involve the Registers in the discussion around the harmonization of (the processes of) those registers. At a conference on the subject of harmonization of registers held in February 2006 at INSEAD in Fontainebleau it became clear that there is willingness among the registers to discuss harmonizing their procedures. Moreover our members see that several authorities and registers are currently still struggling to set up registration procedures, cooperation could certainly help those organisations and foster harmonization.

15 Role of Reuse

Producers welcome the intent of the WEEE Directive to encourage greater reuse of electronic products. However we believe that attempting to measure reuse is very difficult and therefore inaccurate. Setting targets for reuse is consequently meaningless.

A great deal of informal reuse is carried out by the consumer market through passing on products to family and friends, through classifieds ads, e-bay and other such mechanisms. All this happens before the end-user discards the product. It would be impossible to measure this level of activity in such a vast market.

The dilemma with setting re-use targets for separately collected WEEE, is that, for it to be counted, the item must have entered the waste stream. A requirement to meet re-use targets, may force Member States to introduce measures which have an overall negative environmental impact, by pulling reusable items into the waste stream earlier than they would have done. Any proposal to introduce re-use targets for WEEE, on the assumption that this will automatically result in reducing environmental impacts, needs to be tested before it is incorporated in EU legislation.

Next to these difficulties in reporting there are also very concrete problems with the current definition of reuse. A product classified as waste is subject to regulatory requirements concerning (a) Storage and (b) potential trans-boundary movement across the Member States. As a result of the classification, the easier option or greater motivation is often to recycle products as opposed to the original intention of Re-Use of product for its original purpose. Alternatively if returned EEE is to be classified as waste, we would support lighter procedures (for movement, transport, storage and trans-boundary transfer) concerning WEEE sent for reuse / or WEEE that is likely to be reused. This would assist in driving up the Re-use

Problems created by the 'waste' classification for WEEE:

- **Storage:** The distributors/resellers/producers who take back WEEE (1 for 1, or general obligation to take-back) have under other local regulations the obligation to use a special storage space and to act under special storage authorizations. In some countries, like France, each storage site needs to hold a valid administrative authorization, awarded regionally and only after a burdensome application (as they are then considered to be "*installations classées pour la protection de l'environnement*"). Not many Member States have made these procedures lighter/easier for small volumes of WEEE nor have they taken into account the fact

that each site/shop/ gathering site would be considered as storage space for waste. The UK is also requesting waste management licenses prior to any such storage, which depending on the volume take-back/gathered by the producer, has to be requested or declared before any WEEE is accepted. Producers are in effect faced with regulations on waste that go beyond the WEEE Directive, and this creates unnecessary challenges in the compliance process.

- A possible alternative could be to recommend that any 1 for 1 return or any individual pick-up of WEEE (containing non-hazardous substances) at least is partially exempted from temporary storage and waste transport rules, so as to allow for consolidation of the WEEE at a larger (authorized) waste collection or disposition site, or for longer. Or that lighter procedures are allowed, particularly for companies who want to encourage returns by launching “one-off” WEEE days.
- **Transport:** Waste transport licenses are necessary as soon as the returned equipment are classified as waste: This is likely to prevent effective implementation of the producer (and reseller/distributor) obligation to accept one for one take back as companies have to contract authorized waste transporters and this often does not allow for an integration into existing return logistics solutions. This is particularly burdensome when products are collected with a view to reuse.

Definition of what should be classified as reuse:

There should be no distinction between the re-use of products and components. The difference between what’s reused as a whole and reused as component(s) or sub-component(s) is difficult to track and can impose huge business and overhead costs especially for small businesses. Differentiating is extremely difficult to implement, and likely to end up in lower reuse rates. Also, with regard to reporting, some national registers combine recycling, re-use and recovery targets, which causes confusion and does not allow for comparing figures across the EU. This definition requires more clarity as a result.

Reuse Targets:

Current Asset Recovery or incentives for return programs highlight that it is extremely difficult to get all or in some cases any product back. Setting target on reuse will not change the end-user behaviour. In certain cases the products are already being re-used elsewhere but not coming back to the producers, as the grey market and ebay and brokers etc are already greatly used as reuse routes.

The producer has little control over what comes back to him and should not be subjected to heavy or unachievable re-use or collection targets. No producer can bind its customers to return the products to the producer. These products may still have value and customers may use their own brokers for reuse as they still have legal ownership and control of the products even at end of life. As these brokers are not under the control of producers it is impossible to get a good overview of the number of products being reused. Another challenge is how to capture information of parts processed and reused by asset companies.

Reuse to the social/charitable economy sector (Philanthropy): It is our opinion that this specific area for encouraging re-use of products is hampered by the producer responsibility rules still remaining with producers. The definition of a product as waste is a barrier in itself. There might still be liability issues with the entity who holds WEEE

(classified as waste) as it remains responsible for ensuring that the waste does not have any negative consequences to people or the environment. Reuse by donations is also potentially discouraged from a VAT perspective because it costs more, this kind of external tax circumstances does hamper reuse (depending on the countries: an issue in the Netherlands for instance).

Legal implications

There may be legal implication that need to be considered if waste left in a collection point by a consumer on the understanding that the product is going to be recycled, subsequently gets re-used and the original product owners data has not been erased.

EICTA, founded in 1999 is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 55 major multinational companies and 39 national associations from 27 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

JBCE, the Japan Business Council in Europe was founded in 1999 as the representative organisation for Japanese companies operating in the European Union. Its membership represents a broad range of industry sectors and currently consists of 61 global companies.

AeA Europe represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. Our parent company, AeA, is the oldest and largest US high-tech association (2500 + companies).