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Key principles for the implementation of revision to the EU Waste Package

Introduction

As part of the European Commission's Circular Economy Package, a number of EU waste laws have been updated with Member States having until 4th July 2020 to transpose the new provisions into their national legal frameworks. The more fundamental new rules have been introduced via [amendments to the Directive 2008/98/EC on Waste \(Waste Framework Directive\)](#), the overarching piece of legislation impacting all specific waste streams. In addition, the package also amends four specific waste stream policies: [the Waste of Electric and Electronic Equipment \(WEEE\) Directive](#), [the Waste Batteries Directive](#), [the end-of-life vehicles](#) and the [Waste Packaging Directive](#); and the [Directive on the landfill of waste](#).

The [revised EU Waste package](#) intends to set up a more advanced legislative framework that will create the transition towards a more resource efficient Europe and that will unfold the circular economy objectives of the European Commission. It specifies obligations to Member States for harmonising definitions, minimum requirements for the setting up of Extended Producer Responsibility schemes and rules to calculate the attainment of the targets. Member States have the freedom to establish detailed obligations and requirements when transposing the amendment to their national legislative frameworks.

APPLiA recognises the ambitions of this revised EU waste acquis to make it fit for the circular economy by improving the functioning of waste markets but the new waste rules must ensure consistency between the different pieces of waste legislation and be implementable and enforceable.

The volumes of WEEE collected and properly recycled have steadily increased through the investments made by industry, in line with the [WEEE Directive 2012/19/EC](#). Better recycling techniques have been developed through cooperation between producers and recyclers and the introduction of European standards with respect to collection, handling, storage, recycling, preparation for re-use and treatment of WEEE.

In this respect, we particularly welcome the safeguard put in place in the revised waste framework legislation to underpin what has already been achieved in 2012 under the WEEE Directive and the flexibility given to producers to comply individually or collectively to their obligations.



We also welcome the clarification of the preparing for re-use definition. We also very much welcome that there has been more emphasis on the roles and responsibilities of all actors handling waste in the Waste Framework Directive. This has been complemented by the introduction in the WEEE Directive of the obligations for Member States to ensure that data from all actors collecting or treating WEEE is reported. However, consistency with other EU and national pieces of legislation have not sufficiently been sought to ensure legal certainty and avoid contradictions, overlaps or double regulation. Product design rules should not be addressed in waste legislation, which, by its very nature, provides for subsidiarity and is not intended to create a single market.

In this respect, we recommend that national implementation of the new revisions to the legislation considers the following principles.

1. Consistent and flexible implementation to deliver circular economy on the ground

Implementation of the changes to the waste framework legislation should not jeopardise the equilibrium found when the WEEE Directive was revised in 2012 and transposed by Member states in the years after. In line with the principles of the Better Regulation, consistency with other EU and national pieces of legislation, especially the national transpositions of the WEEE Directive and other existing chemicals, safety, consumer protection and product legislation, should be made to ensure legal certainty and avoid contradictions, overlaps or double regulation.

Recommendations for transposition:

Ensure consistency with other EU and national pieces of legislation, especially the national transpositions of the WEEE Directive, and with other existing chemicals, safety, consumer protection and product legislation to ensure legal certainty and avoid contradictions, overlaps or double regulation.

2. WEEE is a valuable and specific waste stream

Due to the value of most WEEE, two thirds are handled by economic operators other than producers or organisations acting on their behalf. With only one third of WEEE is ending up in the officially reported accounts of collection and recycling systems, the rest is likely exported, recycled under non-compliant conditions in Europe, scavenged for valuable parts or simply thrown in waste bins. This represents massive flows of WEEE outside the producer driven WEEE systems. Many 'official' and 'unofficial' commercial collectors handle WEEE, from scrap dealers, to retailers, to municipalities, to waste management companies, to recycling companies and others. While producers and producer schemes are asked to report the WEEE flows collected and treated, these other actors handling WEEE can easily by-pass such reporting obligations, even if the WEEE they handle is properly collected and treated. This can



lead to market distortions creating additional administrative burdens for the producer and difficulty in reaching the achievement of national targets as many of WEEE flows are unreported.

To move towards the circular economy, all WEEE flows should be collected and properly treated and the results be reported by all actors active on the market. Some Member States or regional authorities are already obliging all actors handling WEEE to report data. Article 16(4) of the WEEE Directive provides for Member States to adopt measures to involve all actors in WEEE collection and to receive information on the quantities and categories of WEEE collected through all routes and this should be further encouraged.

Recommendations for transposition:

- Include provisions that ensure that waste streams (especially WEEE) are, as far as possible, actually separately collected at an appropriate point and correctly treated. Include a clear definition of the role of all actors involved in collecting waste and organising its treatment or preparation for re-use as a commercial activity with equal obligations as producers.

- Safeguard the quality of waste treatment with a legal framework that ensures that all waste which has been separately collected is under the control of producers or producer schemes. If, subsequently, other private or public actors are involved in logistics and treatment (including preparation for re-use) these actors should be bound by requirements to meet the locally applicable obligations and standards including appropriate reporting.

- Introduce reporting obligations for ALL waste flows: all treated WEEE according the minimum treatment standards should be reported and registered as being recycled so that these volumes are reflected in the total collection and recycling results in a given jurisdiction

3. Extended Producer Responsibility (EPR) requirements should not hamper producers' freedom to operate & assume responsibilities

Home appliance manufacturers have experience with EPR for over 15 years. EPR for electronic waste was introduced with the WEEE Directive in 2002 and further developed within the revised WEEE Directive in 2012. According to the WEEE Directive, producers can fulfil their obligations individually or collectively. Today, most EPR is fulfilled through collective producer compliance schemes.

The new waste rules aim at further defining the scope of EPR, the obligations of member states for setting up EPR schemes, the obligations for producers and other actors in the waste management chain, and establishing minimum general requirements across Europe to level the playing field and enhance the waste management practices.



Such requirements on the function of EPR schemes should not hamper producers' freedom to operate and assume responsibilities to suit the particular national situation and waste stream concerned. Industry must be entitled to take an active role in fulfilling its legal obligations, to ensure the fulfilment of their responsibilities, to control compliance costs and to ensure that treatment is undertaken correctly. This means being given the freedom to control how separate collection and sorting for recycling/recovery are organised at the applicable national or regional level and ultimately to drive quality of collection and treatment alongside with cost-effectiveness of the processes.

Under WEEE, the costs of waste management are already covered by manufacturers within the limits and in accordance with the responsibility for waste management referred to in Article 15 of Directive 2008/98/EC, at least for the waste which is collected by producers or their compliance schemes. Producers should not be held financially responsible for WEEE which they do not control. EEE producers should only be financially responsible for collection, treatment, recovery and environmentally sound disposal costs of WEEE that has been deposited at collection facilities according to Article 12 of the WEEE Directive and which have been reported correctly.

Article 8a.4 of the Waste Framework Directive (costs covered by the financial contributions paid by producers) does not apply to EPR schemes established pursuant to waste stream specific legislation, such as the WEEE Directive, the Battery Directive 2006/66/EC and the Packaging Directive 94/62/EC. This means that the general minimum requirements for EPR schemes in the Waste Framework Directive cannot alter the scope of the financial responsibility defined in the WEEE Directive.

Public or private waste management operators implementing operational tasks on behalf of producer responsibility schemes cannot expect a "blank cheque" from producers to cover costs unrelated to their obligations and control. Therefore, we believe that costs charged by those operators should only cover the real net costs of waste management carried out on behalf of producers or their compliance schemes. Those costs should be transparent, determined via a detailed benchmarking and audited by third parties to ensure that any costs charged are justified. This arrangement would also help to address the lack of transparency and seemingly illegal practices apparent today in some Member states.

Recommendations for transposition:

- *Requirements on the function of EPR schemes should not hamper producers' freedom to operate and assume responsibilities to suit the particular national situation and waste stream concerned.*
- *Producers must be able to take an active role in fulfilling their legal obligations, to control compliance costs and to ensure that treatment is undertaken correctly.*



- EEE producers should only be financially responsible for collection, treatment, recovery and environmentally sound disposal costs of WEEE that has been deposited at collection facilities according to Article 12 of the WEEE Directive and which have been reported correctly.

4. Criteria for modulated costs should be designed to be fair, transparent and effective

The introduction of the modulation of fees paid by producers under EPR minimum requirements aims to reward producers and incentivise the design of products in terms of durability, recyclability, reparability, reusability and reduction in the presence of hazardous substances. In 2020, the European Commission will publish guidelines on the modulation of financial contributions to assist Member States in implementation. APPLiA and other industry and associations have issued a [joint paper](#) in view of these guidelines.

Obligations and criteria should be clear, transparent, measurable and enforceable. The criteria should also be easily traceable in the information systems of producers. A level playing field should be secured in order to avoid the misuse of the modulated fees by free riders. Due to the important differences between waste streams, between product categories (within the same waste stream) and even between products (within the same product category), there needs to be different types of criteria for different waste streams and product categories. The modulation of fees should not impact the current way of financing the collection and take back of products.

The determination of the criteria for the modulated fees must be defined in close partnership with the producers who are and remain responsible for their various EPR obligations (collection systems, financing, etc).

Recommendations for transposition:

The criteria for modulation of fees should at least meet the following minimum conditions:

- Fees must cover real costs for end-of-life waste management and through modulation provide true incentives for producers.*
- Criteria underpinning the modulation of fees must be harmonised at EU level and coherent with existing EU legislation and related European and international standards.*
- To avoid distortion of the internal market, we ask the European Commission to adopt legally binding criteria to ensure the uniform application of the eco modulation of fees throughout Europe (but excluding any precise determination of the level of the fees). We further call on taking necessary measures to discourage Member States to put in place modulated fee schemes, which deviate from a harmonised EU framework and from setting up new modulated fee schemes until a harmonised EU framework is in place. In fine, the Commission should put in place measures to enforce the modulated*



fee schemes all over Europe given that free-riding in the current EPR system is already heavily distorting the internal market.

- *As the implementation of modulated fees on all WEEE would be extremely challenging, the EU framework and eco-modulation schemes must start simple, i.e. cover only a few easy to understand criteria and only a few types of products or product categories.*
- *Modulated fee criteria should be simple, auditable and enforceable as well as enforced.*
- *Measures must be taken to counter misuse of modulated fees by (online) free-riders.*
- *Existing EPR schemes for WEEE in the Member States and financing obligations of producers must be preserved.*
- *The total sum of fees, i.e. the total set of regular fees as well as bonus and malus fees, must not exceed the necessary costs requirement of the WFD, Article 8(a).*
- *Modulated fees criteria must be defined in close consultation with the relevant stakeholders, and in particular with producers.*
- *Modulated fees criteria must be sufficiently flexible and updated periodically to reflect technological progress.*
- *There should be sufficient implementation time for producers to adapt their processes and particularly the design of the products.*
- *We strongly recommend the European Commission to conduct a thorough impact assessment of the eco-modulation concept, criteria, environmental impacts, financial consequences, existing modulated fees schemes in Europe.*
- *The "real" end-of-life costs and the "recyclability" of a specific product can only be determined years after the product has been placed on the market.*

5. Ensure freedom for manufacturers to choose how they design their products for waste prevention

Prevention of waste is one of the issues that has been extended in the revised legislation. While in the past the Commission was required to investigate the need of measures, Member states are now obliged to set legislative or other measures for preventing waste. Such measures should encourage the design, manufacturing and use of products that are resource efficient, durable, repairable, reusable and upgradable; target products containing critical raw materials; encourage the re-use of products, promote repair and re-use activities, and encourage the availability of spare parts and technical information for repair.

The home appliance industry has always been fully committed to comply with the Ecodesign Framework Directive and associated Implementing Regulations. However, including binding measures to encourage the design of product at national level within the Waste Legislative Framework may contradict already existing rules under the different Ecodesign regulations and is likely to create legal uncertainty and inequality of treatment for waste management actors and producers. APPLiA believes ecodesign should rule on the design and use phase of products and waste legislation should rule on end of life phase of products. For more



information, please see APPLiA's [position paper](#) on Towards an EU Product Policy Framework contributing to the Circular Economy.

If Member States legislate on ecodesign elements at national level, it could increase the fragmentation of the EU waste and single market and lead to difficulties to ensure a proper and full implementation of the existing EU waste legislation within EU Member States.

Recommendations for transposition:

National legislation should not restrict manufacturers to choose how they design their products for waste prevention.

6. ECHA Database pursuant to Article 33 of REACH

The revised EU waste rules aim to facilitate the better recycling and recovery of waste by setting up a database for informing recyclers about the composition of waste in accordance to the information obligations pursuant to Article 33.1 of REACH Regulation.

ECHA is required to establish a database for gathering information about Substances of Very High Concern (SVHC) that suppliers of articles shall provide in accordance with new Article 9.1(i), which requires MS to ensure that suppliers of articles provide the information required by Article 33.1 of REACH Regulation. The database will be freely accessible to waste operators and to consumers upon request (ECHA's complete proposal can be accessed [here](#)).

APPLiA is recommending ECHA and legislators to design a database with formats and submission tools which request only mandatory information that are well within the scope of REACH 33.1. Further information requirements from duty holders may be provided on a voluntary basis, e.g. information on articles' safe-disposal instructions. All relevant documents (e.g. letters used for the different advocacy actions) can be readily accessed by NACs [here](#). At the end of 2019, ECHA suggested to Member States a transposition text for Article 9 of the Waste Framework Directive where the SCIP database tool is specifically mentioned. However, as the current structure of the database includes mandatory information going beyond Article 33(1) of REACH, APPLiA recommends deleting the modification proposal from ECHA and keep only the original legal text as outlined in the Directive.

Recommendations for transposition:

Delete the last part of the proposal from ECHA and maintain only the original legal text: Any supplier of an article as defined in point 33 of Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council provides the information pursuant to Article 33(1) of REACH from 5th January 2021 ~~using the format(s) and submission tool(s) provided by this Agency for that purpose.~~



7. Reuse & Preparation for re-use

APPLiA recognises that preparation for re-use can be beneficial for the environment and can have an important social aspect. Re-use has its place in the waste prevention hierarchy. Preparation for re-use activities should not be confused with re-use of products via the second-hand market. Re-use occurs before items are discarded as waste. Preparing for re-use occurs after items have been discarded as waste. APPLiA believes it is crucial to keep a distinction between the two terms and avoid any confusion between “re-use” and “preparing for re-use,” otherwise it may create difficulties for Member states to monitor the different products and waste flows.

The second-hand market should not and cannot be regulated, as it is not possible to monitor the actors active on these markets due to their diversity and their multiplicity. Flows of re-used products already circulate via online platforms, second-hand shops, barter, donation etc. Monitoring of the existing platforms and the flows of re-used products circulating via them is virtually impossible. APPLiA therefore welcomes the explicit inclusion of preparing for re-use in the material recovery definition in the revised waste Framework legislation as it provides clarification about whether preparing for re-use operations are considered a waste treatment operation or not.

APPLiA also welcomes the introduction of the concept of formally/officially “recognised” preparing for re-use operators. How recognised preparation for re-use operators will be defined and registered is crucial and should be further discussed to ensure the quality of operations and the transfer of liability to those operators. In line with Article 8.5 of the WEEE Directive that outlines the development of standards via European Standardisation Organisations, CENELEC has developed a European standard for preparing for re-use operators under a mandate issued under the WEEE Directive and compliance with this this should be a prerequisite for our sector. This should ensure the quality of preparation for re-use operations as well as providing an overview of the scope of the sector. How recognised preparation for re-use operators will be defined is very important and should be fully discussed to ensure the quality and the liability of the operators taking up these responsibilities.

WEEE already has its own collection and minimum recovery targets set by the WEEE Directive including both recycling and preparation for re-use and does not set any separate target for re-use. WEEE, a complex waste stream, needs to be always separately collected. Therefore, the targets laid down in the WEEE Directive should prevail. In addition, a [European Commission study](#) did not recommend the setting of separate target for preparing for re-use of WEEE in EU legislation.

Access conditions for recognised preparing for re-use operators can be improved at waste collection points under certain prerequisites and according to existing national and local legislation, as well as having robust standards in place.

**Recommendations for transposition:**

- *Keep a distinction between the two terms and avoid any confusion between "re-use" and "preparing for re-use," otherwise it may create difficulties for Member states to monitor the different products and waste flows.*
- *Set criteria to determine recognised preparing for reuse operators at national level.*
- *No separate targets for re-use of WEEE – recycling and recovery targets of WEEE should prevail.*

8. End-of-waste status

The revised waste rules aim to facilitate the uptake of recycled or secondary raw materials by providing homogenised minimum criteria for end of waste status and oblige Member states to establish conditions or more detailed criteria for deeming when waste ceases to be waste.

APPLiA supports the ambition of the European Commission to clarify the end-of-waste status, especially in order to facilitate cross-border movements of waste within the EU. APPLiA supports an EU-harmonisation of end-of-WEEE criteria. We encourage the European Commission to refer to the current work of CENELEC on the standard EN 50625-1 Collection, logistics & treatment requirements for WEEE – Part 1 General treatment requirements, where a useful concept and definitions have been included¹.

APPLiA agrees that measures in the interpretation and implementation by Member States of end-of-waste provisions laid down in the Waste Framework Directive should be taken at the EU-level to bring more harmonisation. Diverging end-of-waste criteria across Members States is already creating (and will still continue to create) difficult scenarios for waste treatment operators to implement provisions laid down under the Waste Framework Directive.

Recommendation for transposition:

- *The interpretation and implementation by Member States of end-of-waste provisions laid down in the Waste Framework Directive come top down from EU-level to bring more harmonisation.*
- *The Commission should facilitate the EU-harmonisation of end-of-waste rules for WEEE waste streams via adopting delegated acts as laid down under Article 6(2) of the Waste Framework Directive.*

¹ The standard 50625-1 defines as follow:

- Final acceptor: acceptor where the final treatment step takes place. To be noted that examples of final treatment steps are material recycling, energy recovery and disposal.
- End of waste: result of treatment whereby the resulting fractions are no longer classified as waste. Fractions cease to become waste following recovery or recycling operation and are regarded as secondary raw materials and so have achieved end-of-waste status



9. Minimum standards for the treatment for waste

APPLiA believes that to ensure uniform conditions for the implementation of Article 8.5 of the WEEE Directive, the Commission should adopt Implementing Acts laying down minimum quality WEEE treatment standards in strict accordance with the European standards for WEEE. Minimum quality WEEE treatment standards will contribute to improved quality waste management and harmonisation of treatment practices throughout Europe.

The European standards EN 50625 and EN 50614 for WEEE lay down specifications expressly designed to put WEEE legislation into practice and cover the process of collection, transport, re-use and treatment of WEEE. These constitute an integral and integrated set of normative requirements and specifications that are critical to achieving the overall objectives of WEEE legislation. WEEE treatment is complex chain of activities undertaken by several operators that can be located in various Member States. Minimum standards guarantee that all parts of the chain are fulfilling the same conditions.

Currently the standards are actively being used. Five Member States are using them as part of a legislative framework. More than 150 WEEE treatment facilities have been audited in accordance with CENELEC normative requirements, contributing to improved waste management and harmonisation of treatment practices throughout Europe.

All waste collected, regardless by which actor, should be recycled according to requirements of the applicable minimum treatment standard(s). The market for e-waste has become a competitive arena with value driven waste collection and treatment activities. The enforcement of recycling treatment standards that would help ensure market dynamics are not diverting flows from the formal system towards illegal activities. APPLiA and other industry and recycling associations have issued a [joint paper](#) calling for Implementing Acts to lay down minimum quality WEEE treatment standards in strict accordance with the European standards

Recommendation for transposition:

- *Minimum quality WEEE treatment standards for collection, transported and treatment of WEEE within a legislative framework.*