

## Public consultation on the evaluation of the WEEE Directive

### Main viewpoints of the Netherlands – 15 September 2023

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The Netherlands welcomes the public consultation on the evaluation of the WEEE Directive and strongly supports a comprehensive scope of this evaluation, taking into account the full life cycle of electric and electronic products from design to reuse and recycling. We are happy to provide our views on specific topics.

In recent years the rate in which electrical and electronic products are manufactured, purchased, and discarded has increased the waste from electrical products (e-waste). WEEE legislation and management is crucial in order to handle the negative impacts of waste electrical and electronic equipment on the environment by avoiding unnecessary emissions and by aiming at retaining important resources. The Netherlands consider the current implementation of the WEEE Directive as being a solid foundation that offers the opportunity for taking further steps by the e-waste sector in contributing to the circular economy. We think those further steps are urgently needed in order to minimize our environmental footprint and preventing e-waste whenever possible.

The current WEEE Directive leaves room for different interpretations by individual Member States on how to transpose the legislation at their national level. As a result, the obligations and conditions stakeholders face in each Member State vary, contributing to an uneven playing field. As a way forward we think the chosen approach for the Batteries Regulation could also very well be applicable to WEEE, meaning a **regulation** as legislative concept and dealing with all aspects in the life cycle of EEE with regard to due diligence, sustainability, extended producer responsibility, waste management and conformity.

The Netherlands suggest to pay attention to the following aspects for which national implementation has been particularly challenging and for which an uptake in effort is needed as well as instrumental improvements:

#### ***Definitions and scope***

Depending on the stakeholder, authority or member state, some EEE could either fall within the scope of the national implementations of the WEEE Directive or not, obviously leading to confusion. Definitions of subjects in the regulation should not be open to multi-interpretation by individual member states or commercial institutions and as a result sometimes leading to problems in the proper treatment of WEEE. Special attention should be given to the issue of components as components are now not considered to be WEEE even though they may contain rare materials and substances of (very) high concern.

So, a thorough examination of definitions and scope should be considered aiming at more clarity and uniform interpretation. An EU-wide standardization of the scope of products/ equipment can possibly create a level playing field in terms of the applicable regulations of the WEEE Directive especially on waste management, producer responsibility and the comparability of collection and recovery targets.

### ***Design requirements***

In context of the European Green Deal and the EU Circular Economy Action Plan, only a comprehensive life cycle approach for electrical and electronic equipment (EEE) will be able to effectively and sustainably address the current challenges with regard to climate change and resource efficiency. Therefore, the (future) requirements for EEE design (e.g., ESPR, RoHS) and WEEE management (WEEE Directive) should be intertwined and should complement one another in a coherent way.

In that regard, horizontal general design requirements for all electrical equipment should be considered. The focus should be on designing all EEE products in such a way that spare parts can be easily removed and replaced and general repairability is enhanced. Furthermore, design for recycling should be promoted by means of binding recycled content targets for relevant materials like plastics and certain metals in order to realize high-quality recycling of WEEE. Some more practical options on better design for easier and safer dismantling could for instance include an increase in the use of mechanical binding practices in all EEE, limit the gluing and welding of components as much as possible, and ensure batteries included in EEE are always removable and not built-in.

### ***Right to Repair***

The policy of 'right to repair' should be applied wherever possible and especially also to (W)EEE. Aiming at open access to specific repair information and spare parts for all actors, including repair companies as well as consumers. Also, a mandatory repair index could be sensible to enable the identification of durable and repairable products by customers.

### ***Eco-modulation of fees***

Application of the modulation of EPR fees based on durability, reparability, recyclability or recycled content etcetera, are not a common practice at the moment. The general hesitation to apply eco-modulation should be researched and especially a mandatory EU wide harmonized approach should be considered. In our opinion eco-modulation of the fees should be designed in a way that is conducive to the application of the waste hierarchy by ensuring that financial support for tonnage collected for preparation for re-use is higher than for tonnage collected for recycling.

### ***Targets for separate collection of WEEE***

The purpose of a collection target is to ensure that a large part of the quantities placed on the market that becomes waste, are properly collected as WEEE. WEEE collection targets have proven to be difficult to achieve in many EU member states. The current main method based on 65% of Put on Market (PoM) and a calculation method of setting the collection quantity in relation to the average quantity placed on the market over the last 3 years, is increasingly experienced as problematic. A large amount of new EEE placed on the market becomes waste much later than after 3 years; this applies in particular to a large part of the equipment in categories 1, 2 and 4 and equipment from users other than private households. Also the current 65% target to collect WEEE mainly for the purpose of recycling has a negative effect on policies for repair and repurpose according to the circular economy. As a measure, it is therefore suggested that the choice for setting targets and subsequently the calculation methodology for the collection rate, be reviewed.

In that regard we suggest to shift the focus to the alternative target already offered by the WEEE Directive, which is based on WEEE generated. A target related to the specific e-waste production in a member state on a yearly basis, seems a more logic choice. So, following the Batteries regulation (article 59 and 60) the introduction of a method based on available for collection (AfC) should be considered. Also, the introduction of separate targets for separate categories could be studied. Either way, in the setting of targets the long lifespan of certain types of EEE as mentioned above, should be taken into account.

### ***Re-use and preparing for re-use***

Improving collection should be a priority area for the new revision of the WEEE Directive as many member states are currently struggling to meet the collection targets set out in Article 6 of the WEEE Directive. To be effective and provide the expected social, environmental and economic benefits, collection should prioritize preparation for re-use by separating WEEE depending on the chosen end-of-life option, in accordance with the waste hierarchy. This is because WEEE meant to be prepared for reuse should be handled more carefully in order to safeguard their reusability during collection, transportation and storage.

The assessment of the reusability of a WEEE item must be obligatory for all collected WEEE without exceptions and happen at the earliest stage possible before it is mixed with recyclables. It is important to better define responsibilities in terms of reuse. So, the current article 6 should be revised in order to make clear that reusable products should be collected in a way that safeguards their reusability. In this regard easily available information for the public including information and directions for repair and re-use would make sense. Also targets that are separate from collection and recycling objectives should be considered.

Policies should encourage the donation of these products to reuse social enterprises out of the waste regime, or consumers prolonging the lifetime of their products through repair. The revision of the WEEE Directive should stimulate waste prevention and preparing for reuse targets. However in practice, it is often difficult to distinguish between 'reuse' and 'preparation for reuse' so appropriate definitions would be an essential prerequisite.

The standard EN50614 for preparation for re-use of WEEE should be the baseline for improving the provisions in the future revision. SMEs and social enterprises often lack the resources to cover the compliance costs and fulfill the reporting obligations associated with standards. Ensuring that integrating relevant provisions in EU legislation, the quality of separate collection can be increased without resulting in a rising administrative burden for SMEs.

### ***Take back schemes***

Taking into account the dependency on consumer behavior for maximizing the separate collection of WEEE, the introduction of specific take-back-schemes for delivering WEEE to the designated collection system correctly, should be considered. In that regard, the recent '*Study on options for return schemes of mobile phones, tablets and other small electrical and electronic equipment in the EU*' from the Commission concludes that instruments that results in the highest estimated environmental, economic and social cumulative impacts are financial incentives, deposit-return systems and targets for re-

use. The study also mentions several other options, or the combined application of options, for stimulating and improving the correct return of WEEE.

Furthermore, the 400m<sup>2</sup> threshold in Article 5 is considered difficult to recognize and to enforce, as it is linked to the sales area relating to EEE, which can only be verified in individual cases and with high effort. Even if the size of the entire store would be the decisive factor, a consumer probably would not know for sure whether a return obligation would apply. Therefore we suggest a mandatory specification of a uniform collection point label that allows consumers to easily spot proper collection points. In addition, expanding the definition of very small WEEE, which are taken back without the obligation to buy EEE of an equivalent type, would be beneficial. It is particularly important to address the responsibility of online retailers in a more binding and specific manner since they sell most of EEE, but only take back small amounts of WEEE. To facilitate convenient return of WEEE, the take-back obligation should be extended to a larger number of distributors.

### ***Proper treatment of WEEE***

Treatment requirements should be updated according to current challenges due to recent developments of WEEE treatment technologies as well as of EEE design and composition. In addition, preparation for reuse should be strengthened and high quality recycling enhanced. We consider the use of the CENELEC standards as a baseline for modern EU-wide requirements. These standards go back to a mandate of the EU Commission to enhance treatment of WEEE and have already been made mandatory in some member states. The standards of CENELEC for treatment of WEEE (EN 50625 series) provide a secure level of proper treatment of all WEEE, so integrating the provisions from these standards as mandatory into the regulation should be considered.

### ***Annex VII on selective treatment***

Since the publication of the WEEE Directive, several publications indicate a larger amount of hazardous components in WEEE than mentioned in Annex VII of the directive, are not depolluted properly. Especially substances of (very) high concern are a threat to the circular economy so mandatory removal of components with these substances from WEEE prior to size reduction should be usual. Therefore an update on the materials and the components as listed in Annex 7 is relevant and should be considered.

Furthermore we suggest to define certain components and materials which have to be separated before mechanical shredding in Annex VII of the WEEE Directive (Selective treatment requirements) to avoid their destruction to prevent a potential contamination of output fractions, a fire risk and/or the loss of valuable raw materials, e.g. separation of batteries, which can be removed with commonly available tools, before mechanical shredding.

### ***Recycling and recovery targets***

The digital transition will need more metals for electronic products, being that basic metals (e.g. copper, aluminium), precious metals (e.g. silver, gold, palladium) and technology metals (e.g. silicon, germanium, indium). Hence, upcoming revision of the WEEE Directive is instrumental to deliver as much materials as possible from the secondary sources and to meet objectives of the EU Circular Economy.

In the current legislation recycling and recovery targets are focused on weight-based metrics. Targets that are focused more on quality rather than solely quantity should be considered. Recovery targets regulated in Article 11 of the current WEEE Directive should be more tailored to specific product types and should grant flexibility around the methodologies implemented to reach and promote greater recovery of key critical raw materials (CRMs) and a higher capture and removal of toxic and hazardous substances and fractions. To enhance resource efficiency we suggest to introduce recycling targets for plastics and to introduce a separation requirement for rare-earth magnets at least from linear motors, from hard disks and from motors of e-bikes before mechanical shredding with subsequent feeding into a recycling process. Targets should be set for minimum reclamation efficiency for several high value materials and CRMs.

Recycling target for WEEE could also be complemented by requirements for recyclability, quality requirements for recyclates, and mandatory targets for the use of recyclates. This should be mutually taken into account in the Ecodesign for Sustainable Products Regulation (ESPR) and the revision of the WEEE Directive.

We suggest to introduce separation requirements before or after shredding for metals to avoid downcycling effects for certain materials like aluminium or copper in the steel fraction.

### ***End of Waste criteria***

Treatment of WEEE is an international business with often complex chains of treatment operators. This makes downstream monitoring of treatment in order to ensure the compliance of the recovery targets in article 11, difficult to verify. The possibility of taking up specific end-of-waste criteria should be considered in this regard.

### ***Online sales***

Imports from third country sellers notably through online marketplaces, are often subject to evading the producer responsibilities obligations for WEEE and consequently risking violation of environmental and safety rules. Therefore the introduction of liability and due diligence obligations for online platforms in WEEE should be considered. For example, there is a need for a compulsory verification of producers also by online marketplaces and fulfilment service providers to prevent free riders from third countries within the legislation for (W)EEE.

The effective enforcement of the existing Extended Producer Responsibility (EPR), including with regard to producers established outside the EU and operating in the internal market, is essential for both environmental and competitive reasons. Holding online marketplace operators and fulfilment service providers accountable should be the main approach for non-EU producers' compliance with EU rules.

### ***Export of used EEE***

EEE is (increasingly) being given a second life as used equipment. Some of this used equipment are also exported to (non-EU) countries. At the same time, there is no reporting obligation for used equipment and the quantities of used equipment cannot be monitored. Meaningful quantification by means of foreign trade statistics is complicated. Transporting electronic across borders can be very challenging. The reason for this is, that there is no clear definition for when electronics is waste and when it is still a product. Export to third countries of used EEE of low quality that turns into waste quickly should be restricted to avoid the negative local impact. Therefore specific requirements for shipment of items for re-use should be considered to essentially rule

out illegal exports of e-waste. The current Annex VI of the WEEE Directive should be made more specific.

### ***International dimension of EPR***

Used EEE that have been shipped to other countries for further re-use will have to be properly treated when reaching their end-of-life in receiving countries (within or outside the EU), compensation of this burden should be ensured within the EPR scheme in a global context and by means of financial- or material support or targets, whichever is most appropriate. For example a sensible approach could be to make producers responsible for financing and organizing the separate collection and treatment of exported used EEE that have becomes e-waste in third countries lacking EPR facilities. Several reports are available providing insight in the nature of the issue and containing option for solutions (we refer to the following reports: EEB/Circular Innovation Lab – *Study on items shipped for reuse and EPR fees*, Copernicus Institute – *Ultimate Producer Responsibility for e-waste* and Policy Brief – *Blueprint for Ultimate Producer Responsibility*).

### ***Informing consumers***

Producers and distributors of EEE should provide information to users on the fact that EEE should be returned to a collection point at the end of their useful life and the different collection schemes available. In addition, all actors obligated for WEEE take-back, should provide more specific information for consumers about disposal of WEEE (e.g. posters, pictures, written information) at the collection/take-back points or points of sale, by means of clearly visible and legible written or pictorial signs placed in the direct line of sight of the customer main aisles.

We suggest to implement a mandatory specification of a unified collection/take-back point label. This label can help the consumers to easily spot all collection/take-back points for WEEE. The label should be mandatory used by all actors who are obligated for WEEE collection and take-back. Finally, disclosure of information to all users should make use of modern information technologies such as free of charge websites and social media awareness campaigns. All these activities should be organised and financed by extended producer responsibility (EPR) schemes.