

# DIGITALEUROPE Position Paper on the Waste Framework, WEEE2 and Battery Directives

Brussels, 22 March 2017

DIGITALEUROPE, the European association representing the digital industry, supports the Commission's initiative to address the challenges of moving to a Circular Economy. The digital industry is very positive about the circular economy and strongly supports moves to implement circular economy practices and thinking. Indeed, our members are early adopters of many best practices examples mentioned in the Circular Economy Package Communication.

Nevertheless, we need to ensure that any additional requirements stemming from the Waste Framework, WEEE2 or Battery Directives are workable for industry and do not hamper further developments and innovation. With this in mind, we recommend that policymakers consider the following key recommendations:

1. **Re-use and repair:** Paragraph 3 of Parliament amendment 154 should be deleted, as product information (such as schematics) is usually proprietary; intellectual property, safety, quality and liability concerns persist.
2. **All Waste Flows** should be measured to provide accurate data on all waste that is properly collected and treated.
3. **Producer Financing:** Member States should retain flexibility on this matter, as financing should not be extended without control or limit.
4. **Modulated fees:** Criteria should be harmonised to ensure sufficient scale of incentives to drive design and reduce administrative burden for producers; furthermore, recycling fees should reflect real end of life costs of electronics recycling.
5. **Visible fees:** Parliament Amendment 135 should be deleted. Visible fees should not be compulsory for Member States or producers, as is current practice for WEEE.
6. **Duplication of regulations:** Several amendments by the European Parliament and proposed amendments by the Council lead to duplication of regulations (e.g. eco-design, chemical regulations). Such duplication could result in a lack of harmonisation for products placed on the EU market.
7. **Battery Directive:** stay as close as possible to the European Commission's proposals. A full revision of the Battery Directive is currently in process within the Commission's services. The scope of the revision as part of the Circular Economy Package should be kept to the minimum. Further changes should be based on the comprehensive assessment of its shortcomings and successes foreseen by the Commission as part of the regular revision process of this Directive.

## 1. Re-use and repair: Paragraph 3 of European Parliament amendment 154 should be deleted, as product information (such as schematics) is usually proprietary and intellectual property

Product information (such as schematics and product updates) is usually proprietary and intellectual property of manufacturers and/or provided to professional vendors. Making this information publicly available, without any restrictions, to all end-users and repair vendors invites fraud and counterfeit products put on the market (e.g. it is possible for a company to build competing products out of proprietary components). Such practices will directly undermine manufacturer's competitiveness and ability to market new products and technology.

In addition, repair usually requires specialised training and equipment. Careful authorization and control of repair facilities in relation to warranties provided is required to ensure sufficient protection of consumers in terms of quality of repairs, reliability and product safety. If repairs are not conducted correctly, manufacturers may be liable and customer satisfaction will be impacted, while manufacturers cannot control the repair operation. Working with authorised partners ensures that they have adequate training, skills and meet the desired levels of quality.

Expert research indicates that it would not be feasible to apply separate preparation for reuse targets within the WEEE Directive. WEEE reaching waste facilities has little value for reuse – it is old, cannibalized and obsolete. Potentially reusable IT is calculated to be 2,86 %. The recent report from the European Commission 'Study on WEEE recovery targets, preparation for re-use targets and on the method for calculation of the recovery targets'<sup>1</sup> concluded that 'data is missing on the real quantities of WEEE that could be re-used and prepared for re-use in the EU'. In addition, policymakers should recognise that large volumes of EEE are being reused, but that this reuse happens before items become waste – through reuse organisations, asset management companies, family and friends, and online market places such as ebay.

Spare parts are a commercial commodity and traded worldwide. Producing, transporting, storing, installation and repair of spare parts are a cost. It would lead to unfair commercial practices if spare parts had to be made available to any reuse operator at the cost of the producer. Furthermore, the current amendment creates uncertainty as to whether the producer has an obligation to keep spare parts, including for products that have no longer an economic value. This would have negative environmental consequences in requiring resources to be consumed for products that are potentially not economically repairable.

### DIGITALEUROPE recommends deletion of paragraph 3 of Parliament Amendment 154

#### Amendment 154 paragraph 3

*Member States shall take the necessary measures to enable that re-use operators have access to instruction manuals, spare parts, technical information, or any other instrument, equipment or software required for the re-use of products, without prejudice to intellectual property rights.*

<sup>1</sup> [http://ec.europa.eu/environment/waste/weee/pdf/16.%20Final%20report\\_approved.pdf](http://ec.europa.eu/environment/waste/weee/pdf/16.%20Final%20report_approved.pdf)

## 2. All Waste Flows should be measured to provide accurate data on all waste that is properly collected and treated

All waste that is properly collected and recycled must be accounted for, so legislation is based on a full understanding of how waste flows through the economy and market distortions do not occur. For example, with a general trend of the value of WEEE increasing, we have witnessed more and more WEEE being collected and recycled by actors operating outside of the producer controlled WEEE systems. These “complementary WEEE flows” are being collected by an array of actors, operating from small-scale door-to-door collectors to large-scale scrap dealers and recyclers.

### DIGITALEUROPE supports WEEE Amendment 28

#### WEEE Amendment 28: Article 16 – paragraph 5a

Member States shall report the data concerning the implementation of Article 16(4) for each calendar year to the Commission. They shall *collect and process* this data *in accordance with the common methodology referred to paragraph 5d of this Article and report it* electronically within 12 months of the end of the reporting year for which the data are collected. *Member States shall ensure that data from all actors collecting or treating WEEE are reported.* The data shall be reported in the format established by the Commission in accordance with paragraph 5d.

In addition DIGITALEUROPE recommends further amending the text as follows:

#### Article 8.1 bullet 3

– establish a reporting system to gather data on the products placed on the Union market by the producers subject to extended producer responsibility. Once these products become waste, the reporting system shall ensure that data is gathered on the collection and treatment of that waste *collected through all routes* specifying, where appropriate, the waste material flows;

#### Article 8.5

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products are implementing their extended producer responsibility obligations, the financial means are properly used, and all actors involved in the implementation of the scheme *or actors collecting this waste through all routes* report reliable data. Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, Member State shall establish an independent authority to oversee the implementation of extended producer responsibility obligations.

### 3. Producer Financing: Member States should retain flexibility on this matter, as financing should not be extended without control or limit

DIGITALEUROPE is concerned that proposals to require producers to provide additional funds for municipalities could hand local authorities a ‘blank cheque’ and enable costs to be charged onto producers with no control or limit. In addition, policymakers need to recognise that in reality many municipalities offset their costs through the sale of valuable waste materials to recyclers. The long-term trend of the increasing value of waste means that many waste streams have a positive value. Therefore, only the net costs of waste management should be borne by producers.

Furthermore, the Council proposes to include costs for reuse in the scope of the financial contributions paid by producers (art. 8a.4). Producers have established their own reuse systems to repair and refurbish used products. Therefore, many reuse organisations are commercial entities or competitors in this market. It would be a distortion of a current commercial business model and create unfair competition if the Council decided to change to a model where producers are required to pay for the reuse of used equipment.

DIGITALEUROPE supports Parliament amendment 125:

#### Amendment 125

4. The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 15(1). *The provisions of Articles 8 and Article 8a are without prejudice to the provisions concerning extended producer responsibility contained in other Union legal acts*”

DIGITALEUROPE does not support the following amendment in the emerging Council text:

#### Council Text Art. 8a

Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

(a) cover [...] **at least the following** costs of waste management for the products it puts on the [...] market **in that Member State** [...]:

- costs of separate collection, [...], sorting and **other waste** treatment operations, **and where appropriate of reuse** [...], required to meet **at least** the waste management targets **established in Union legislation and to meet the other targets and objectives** referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;

#### 4. ‘Modulated fees’: Criteria should be harmonised to ensure sufficient scale of incentives to drive design and reduce administrative burden for producers; furthermore, recycling fees should reflect real end of life costs of electronics recycling

It is vital that any criteria used to differentiate the financial contributions paid by producers are harmonised between Member States to provide consistent incentives and rewards to manufacturers, and implemented in line with national circumstances. If different member States adopt different criteria, a patchwork of criteria will be unlikely to generate a sufficient scale of incentives to drive changes to product design. Such an approach would merely create a large administrative burden for producers, and is unlikely to result in environmental benefit. Overall, differentiated recycling costs should be used as a tool to cover end of life costs of products and compensate for the efforts of manufacturers addressing the end of life aspects of their products, but not to incentivise broader aspects of environmental performance of EEE, such as reuse.

Under EPR manufacturers should receive economic incentives for environmental design considerations facilitating the recovery and recycling of materials. In particular, we welcome any reduction in costs relating to the end-of-life treatment that can help make secondary raw materials more competitive.

The ErP Directive is the principal means to determine any design requirements for products. The environmental performance of EEE is regulated by Directive 2009/125/EC (Ecodesign), which sets mandatory requirements to improve the environmental performance and quality of all products. The Ecodesign Directive and its implementing measures are being developed based on impact assessments and stakeholder consultations. It should continue to be the only vehicle to advance higher environmental standards for products put on the market. This extends to questions of durability, reparability, use of recycled content etc., which should all be assessed for impact and cost benefit under existing processes under this Directive.

DIGITALEUROPE suggests rewording Parliament amendment 140 as follows:

##### Article 8a – paragraph 4 – point b

*in the framework of collective schemes, are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably by taking into account their **durability, reparability, re-usability and recyclability and the presence of hazardous substances hereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and when available, based on harmonized criteria in order to ensure a smooth functioning of the internal market.***

Indeed, reparability and prevention of waste happen before the recycling stage, while hazardous substances are regulated under RoHS and REACH.

DIGITALEUROPE supports Parliament amendments 75 and 126

##### Amendment 75 indent 4

(29) In order to supplement or amend Directive 2008/98/EC, the power to adopt acts in accordance with

Article 290 of the Treaty should be delegated to the Commission in respect of:

- *harmonised criteria to be followed when determining the financial contributions paid by producers to comply with their extended producer responsibility, as modulated on the real end-of-life cost of the products,*

#### Amendment 126: Article 8.5

*5. No later than [insert date 6 months after the entry into force of this Directive] the Commission shall set up a platform for an exchange of information between Member States, civil society organizations, regional and local authorities and the actors involved in producer responsibility schemes on the practical implementation of the requirements defined in Article 8a and on best practices to ensure adequate governance and cross-border cooperation of extended producer responsibility schemes and a smooth functioning of the internal market. This includes, inter alia, exchange of information on the organisational features and the monitoring of producer responsibility organisations, , the development of harmonized criteria for the financial contributions referred to in point (b) of Article 8a (4), the selection of waste management operators and the prevention of waste generation and littering. The Commission shall publish the results of the exchange of information and may provide guidelines on relevant aspects.*

*No later than [insert date 12 months after the entry into force of this Directive], based on a study and taking into account the input from the platform, the Commission shall adopt guidelines on the determination of the financial contributions referred to point (b) of Article 8a(4). To ensure coherence in the single market, the Commission may adopt delegated acts in accordance with Article 38a in order to supplement this Directive by establishing harmonized criteria to be followed by Member States when determining the financial contributions referred to in point (b) of Article 8a(4).*

**5. Visible fees:** Parliament Amendment 135 should be deleted. Visible fees should not be compulsory for Member States or producers, as is current practice for WEEE

DIGITALEUROPE is concerned that Parliament Amendment 135 could be interpreted as requiring compulsory visible fees. DIGITALEUROPE believes that visible fees may be appropriate for products for which the cost of collection and recycling is substantial in comparison to the product-selling price. However, they may be inappropriate for products that can be collected and recycled for a negligible cost. In the IT industry for example, the costs of applying a visible fee system can far exceed the actual cost of recycling the products. This then places an additional burden on businesses already making significant investment in WEEE compliance and so also places an unnecessary cost burden on the consumer. Visible fees should therefore remain a voluntary tool.

DIGITALEUROPE recommends deletion of Parliament Amendment 135

**Amendment 135 Article 8a – paragraph 3 – point d**

*- In the framework of collective schemes, the financial **contribution** paid by the producers **per unit sold or per tonne of product placed on the market**;*

**6. Duplication of regulations:** Several amendments by the European Parliament and proposed amendments by the Council lead to duplication of regulations (eco-design, chemical regulations). Such duplication could result in a lack of harmonisation for products placed on the EU market

The ErP Directive is the principal means to determine any design requirements for products. The environmental performance of EEE is regulated by Directive 2009/125/EC (Ecodesign), which sets mandatory requirements to improve the environmental performance and quality of all products. The Ecodesign Directive and its implementing measures are being developed based on impact assessments and stakeholder consultations. It should continue to be the only vehicle to advance higher environmental standards for products put on the market. This extends to questions of durability, reparability, use of recycled content etc., which should all be assessed for impact and cost benefit under existing processes under this Directive. Similarly, chemicals are subject to specific regulations like REACH and RoHS. They undergo different assessment processes; therefore they should not be dealt with via a waste law.

DIGITALEUROPE therefore does not support the following Parliament amendments:

**Amendment 146 indent 9:**

*- Ensure communication of substances of very high concern from the supply chain to consumers and waste treatment operators;*

**Amendment 234 (2.3):**

*Implement best available techniques for waste treatment aiming at removal of substances of very high concern where this is technically and economically viable;*

DIGITALEUROPE does not support the following amendment from the emerging Council text:

**Article 9**

Member States shall take measures to prevent waste generation. These measures shall:

**- promote the reduction of the content of hazardous substances in materials and products and the communication about hazardous substances in the supply chain;**

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## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

## DIGITALEUROPE MEMBERSHIP

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**Cyprus:** CITEA

**Denmark:** DI Digital, IT-BRANCHEN

**Estonia:** ITL

**Finland:** TIF

**France:** AFNUM, Force Numérique, Tech in France

**Germany:** BITKOM, ZVEI

**Greece:** SEPE

**Hungary:** IVSZ

**Ireland:** TECHNOLOGY IRELAND

**Italy:** ANITEC

**Lithuania:** INFOBALT

**Netherlands:** Nederland ICT, FIAR

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**Ukraine:** IT UKRAINE

**United Kingdom:** techUK