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DIGITALEUROPE Recommendations for the EU Guidelines on EPR Modulated Fees

Response to the Eunomia ‘Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes’

Executive Summary

DIGITALEUROPE, the European digital industry association, represents companies who are driving and implementing Circular Economy practices into their daily business activities. Our members strive to be at the forefront of new sustainable initiatives, as shown through our ongoing best practices.¹

As such, we support the Commission’s initiative to address the challenges of moving to a Circular Economy.

This paper builds on our paper [‘DIGITALEUROPE Recommendations for the Modulated Fees Guidelines including Suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones’](#) from 15 October 2019, on our [‘Joint industry comments on modulating contributions for Waste Electrical and Electronic Equipment’](#) from 25 July 2019 (APPLiA, DIGITALEUROPE, EucoLight, LightingEurope, Orgalim, Weee Forum) and on the Eunomia [‘Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes’](#).

¹ Joint industry paper on Enabling the Circular Economy - Ensuring a free flow for products for repair, remanufacturing and refurbishment, 27 September 2016, <https://www.digitaleurope.org/resources/joint-industry-paper-on-enabling-the-circular-economyensuring-a-free-flow-for-products-for-repair-remanufacturing-and-refurbishment/>

This paper includes:

Part 1: A response to the proposed key principles for Fee Modulation in the Eunomia study

Part 2: A response to the proposed criteria for WEEE Fee Modulation in the Eunomia study

Part 3: Suggestions for the implementation of Fee Modulation

This paper is provided as input to the Consultants and the Commission who are tasked with issuing guidelines to Member States for the fee modulation by end of 2020.



Part 1: A response to the proposed key principles for Fee Modulation in the Eunomia study

In its Study on modulated fees, Eunomia highlights the importance of **harmonised criteria** across EU Member States and suggests the consideration of an implementing act if guidance alone does not bring about sufficient consistency of approach across Member States. “This is important not only to ensure the smooth functioning of the internal market, but also to maximise the potential for positive environmental change.”² We fully support this statement by Eunomia, which reflects our position stated in previous position papers: It is vital that the criteria used to differentiate the financial contributions paid by producers are harmonised between Member States to provide consistent incentives and rewards to manufacturers.

With regards to selecting the **appropriate criteria** for fee modulation, Eunomia remarks that “as a general principle, it is better to focus a policy instrument on doing one thing well, than on seeking to achieve multiple objectives”³. We fully agree with this principle proposed by Eunomia, since too many criteria at the same time would create a high level of complexity leading to a significant administrative burden, while diluting what modulation is actually seeking to achieve.

We support that “account should also be taken of **existing regulatory interventions**, and any anticipated future changes to these, such as improved

² P. 63 Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

³ P. 65 Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

product standards. This is to ensure that fee modulation is consistent with and supportive of other relevant regulations.”⁴

When it comes to **ensuring cost recovery**, Eunomia recommends that only the level of the malus should be set in advance, and the proceeds of the malus should then be distributed to those formats eligible for a bonus. Accordingly, all producers would know in advance what is required to achieve a bonus, but they wouldn't know the level of the bonus they will receive.⁵ We cannot agree with this recommendation by Eunomia. Extended Producer Responsibility (EPR) schemes have extensive experience in calculating and predicting fees, and the current French EPR system shows, that setting both the bonus and the malus in advance is possible, if a thorough study is carried out in order to identify realistic fees. As Eunomia suggests in its principle 5.8 (p.71), transparency and clarity is very important for businesses – and in our view this is also true for the magnitude of the fee modulation. Knowing the level of bonus and malus will create better incentives for good product design. The financial management of the modulation will require a multi-annual budgetary planning to ensure stability of the PROs financial systems. Both the fee magnitude and the criteria should be based on an in-depth study.

We partly agree with Eunomia's principle 5.11. (**Accounting for Competing Schemes**). As stated in previous position papers⁶, it is vital that Fee Modulation is implemented in line with Member States existing WEEE systems. However, Eunomia suggests that the “magnitude of the fee modulation for a given product or packaging format is set centrally (e.g. by the central register) in absolute terms, i.e. the extent of the ‘bonus’ or ‘malus’ is set as an absolute monetary amount, rather than a % above or below the base fee”.⁷ We do not agree with this proposal. EPR schemes should be responsible for setting the modulated fees, not as an absolute amount but as a percentage of the base fee. As we highlighted in our joint

⁴ P. 67 Study to Support Preparation of the Commission's Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

⁵ P. 67 Study to Support Preparation of the Commission's Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

⁶ See DIGITALEUROPE Recommendations for the Modulated Fees Guidelines including Suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones' from 15 October 2019 and Joint industry comments on modulating contributions for Waste Electrical and Electronic Equipment, 25 July 2019, APPLiA, DIGITALEUROPE, EucoLight, LightingEurope, Orgalim, Weee Forum

⁷ P. 72 Study to Support Preparation of the Commission's Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

industry position paper⁸, setting the level of the contributions should be the prerogative of Producer Responsibility Organisations (PROs). Centrally set absolute monetary amounts could lead to disproportional fee modulation with regards to the base fee and are less likely to reflect real collection and end-of-life treatment costs only.

In its 'Recommendations for Implementation, Determining the Magnitude of the Modulation (7.4.7)' Eunomia analyses the impacts of the magnitude of fee modulation with and without a visible fee. It states the following: "Where fees are paid directly the modulation factors can be small (as a percentage of the product price), since when applied to large brands across millions of items sold in the EU, the differences will still be impactful and hence are more likely to drive better eco-design."⁹ In other parts of its study, Eunomia refers to fee modulation as a % of the base fee. We do understand that Eunomia supports fee modulation based on the compliance fees and not based on the purchase price of a device, and only uses the 'percentage of the product price' in this specific paragraph to analyse the impact of fee modulation in relation to the product price, and hence we coincide with Eunomia. However, to make it clear, we want to emphasize that the modulation should be based on compliance fees and cannot be based on the purchase price of the device. The latter approach would effectively lead to an additional, disproportionate tax-like burden on high-quality, durable products. Furthermore, product prices are not fixed and are subject to change, and they differ from product to product, which would not allow PRO's to calculate fees in advance.



Part 2: A response to the proposed criteria for WEEE Fee Modulation in the Eunomia study

Eunomia recommends that criteria are used in combination and vary by product group. We support this statement and would like to highlight that the criteria should be defined considering products categories specificities, as not all criteria are applicable or relevant for all product categories. In particular, the methodology, criteria (and thresholds) for consumer electronics may not be applicable or relevant for professional equipment, and vice-versa.

In its study, Eunomia proposes potential criteria for Modulation.

⁸ Joint industry comments on modulating contributions for Waste Electrical and Electronic Equipment, 25 July 2019, APPLiA, DIGITALEUROPE, EucoLight, LightingEurope, Orgalim, Weee Forum

⁹ P. 111 Study to Support Preparation of the Commission's Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

- ▶ Eco-labels: As indicated in DIGITALEUROPE’s Recommendations for the Modulated Fees Guidelines including suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones, we fully agree to use recognised certification like EPEAT and TCO or criteria required across these standards and ecolabels as criteria to claim the modulation incentives. We suggest to also include the Blue Angel as a highly recognised EU label. Further refinement would be needed to ensure a certain level of harmonisation of such criteria across product categories.
- ▶ We support to establish **disassembly and repair** criteria for fee modulation, such as availability of spare parts and product upgrades.¹⁰
- ▶ We support to include ‘**information for repairers and recyclers**’ into the set of criteria for fee modulation, as long as this refers to professional repairers and does not compromise safety, quality, nor IPR, as outlined in the Waste Framework Directive’s provision on ‘Right to Repair’.¹¹
- ▶ We support considering establishing criteria for fee modulation regarding the **availability of essential spare parts** for at least five years after the final date of placing on the market.¹² However, it needs to be highlighted that product specificities and manufacturing processes should be considered, as for some products an overproduction of spare parts could result from this criteria in order to be able to ensure availability, which would have adverse effects on the environment. Providing digital files for 3D printing of spares (free of charge) does not appear to be feasible in the near future and including this into the fee modulation criteria does not seem likely to yield great changes, as it would create very high additional overhead costs for manufacturers. Therefore, the incentive through fee modulation is expected to be low.

¹⁰ See DIGITALEUROPE Recommendations for the Modulated Fees Guidelines including Suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones’ from 15 October 2019

¹¹ “Professional repairer” as defined in the new eco-design regulation for electronic displays: “an operator or undertaking which provides services of repair and professional maintenance...”. Also see DIGITALEUROPE position on repair in “DIGITALEUROPE position on the Lot 5 Ecodesign and Energy Labeling regulations notified to the WTO”, 2018.

¹² See DIGITALEUROPE Recommendations for the Modulated Fees Guidelines including Suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones’ from 15 October 2019: A minimum of 300 charging cycles with at least 60% of the initial capacity has been proposed.

- ▶ We support the proposal by Eunomia to include **the battery life** with a minimum number of charging cycles with at least 60% of the initial capacity into the fee modulation criteria.¹³
- ▶ Eunomia proposes criteria on **durability and warranty period**. Additionally, there are discussions about the indication of the lifetime of a product connected to the warranty period. We fully agree that long-lasting durable products are key for a more sustainable consumption. Keeping products as long as possible in their use-phase is essential. However, the definition of a product's lifetime would be particularly challenging, as this also depends on how the final customer uses and maintains the product.¹⁴ The indication of the products' lifetime, a free extended warranty for up to five years and warranty labelling as criteria for fee modulation are not expected to bring about the desired outcomes as these would imply high additional costs for businesses, which are likely to offset incentives through fee modulation.
- ▶ We support a minimum of 10% **PCR in plastic parts** over 25g as criterion for fee modulation of PCs, as stated in our previous position paper¹⁵. In order to really incentivise producers to meet the criteria, we recommend to further adapt the criteria as product design evolves, but not to set criteria too high from the beginning, as this could lead to disincentives if producers perceive criteria to be unachievable. Eunomia suggests to potentially increase the minimum PCR to 20% for some products where the aesthetics of plastic parts are less significant. We suggest determining the percentage on a product by product basis, if plastic that includes PCR meets all required safety and quality requirements for the product type'.



Part 3: Suggestions for the implementation of Fee Modulation

We highly appreciate the extensive study which the European Commission has appointed Eunomia to carry out, and we support large parts of the study. As Eunomia has pointed out in several sections, “there is a risk of watering down impact and increasing complexity for producers and PROs if different criteria are

¹³ See DIGITALEUROPE Recommendations for the Modulated Fees Guidelines including Suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones' from 15 October 2019: A minimum of 300 charging cycles with at least 60% of the initial capacity has been proposed.

¹⁴ For reference also see [DIGITALEUROPE's vision for sustainable consumers](#)

¹⁵ See DIGITALEUROPE Recommendations for the Modulated Fees Guidelines including Suggested examples for the criteria that could be implemented for PCs, Imaging Equipment, TVs & displays and Mobile Phones' from 15 October 2019

used in different Member States. Harmonisation of criteria across Member States is therefore very important [...].”¹⁶ We fully agree with this remark and therefore strongly suggest considering an **Implementing Act** instead of guidelines on modulated fees.

In its chapter 7.4.6 (‘Using the Criteria in Combination, by Key Product Groups’) Eunomia mentions the option of introducing a scoring system with two bonus levels¹⁷ (alternative to the option of only achieving the bonus if ALL criteria are met). We welcome this proposal by Eunomia, as it would incentivise businesses to also work on achieving single criteria, if meeting all criteria doesn’t seem feasible yet. A system in which all criteria must be achieved in order to obtain a bonus, could lead to lower incentives for product and packaging design changes, if the burden is considered too high.

FOR MORE INFORMATION, PLEASE CONTACT:



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¹⁶ P. 105 Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes
https://ec.europa.eu/environment/waste/studies/pdf/DG%20Env%20EPR%20Guidance%20-%20Final%20Report_FOR%20PUBLICATION.pdf

¹⁷ P. 108 Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes
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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 Membership

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National Trade Associations

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Belarus: INFOPARK

Belgium: AGORIA

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT

BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec

Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

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