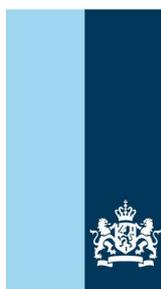


European Union Network for  
the Implementation and Enforcement  
of Environmental Law

## IMPEL Project “Practicability and Enforceability of the WEEE Directive Recast Proposal”



VROM-Inspectie  
*Ministerie van Volkshuisvesting,  
Ruimtelijke Ordening en Milieubeheer*



ENVIRONMENT  
AGENCY



Institute for  
European  
Environmental  
Policy



### **Introduction to IMPEL**

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Bruxelles, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 6th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its websites at:  
<http://europa.eu.int/comm/environment/impel>  
[www.impeltfs.eu](http://www.impeltfs.eu)

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**Executive summary:**

IMPEL previously developed a checklist to examine the practicability and enforceability (P&E) issues of proposed and existing environmental law. In December 2008 the Commission adopted a Recast Proposal for the WEEE Directive. This report describes an assessment of the P&E issues arising from the proposal based on the IMPEL checklist.

IMPEL members were asked to identify P&E issues on the Recast Proposal through a questionnaire which adapted the checklist questions to the specific elements of the Recast Proposal. The comments from IMPEL members were then further discussed at a workshop. Overall comments were received from 16 IMPEL members from 14 member countries (AT, BE, BG, CZ, DE, EE, FI, HR, NL, PT, SE, SI, SK and UK). The report presents a synthesis of the results of the questionnaire responses and workshop discussions.

The report highlights a wide range of P&E issues. The project has been careful to avoid issues of a more political nature (also of interest to IMPEL members) which should be addressed through the usual procedure of the legislators in the co-decision process.

The WEEE Directive has been a challenge to implement in many Member States, from ensuring effective collection and treatment to controlling shipments outside the EU. Therefore, measures to improve the Directive are welcome. Most IMPEL members stressed positive views on many changes in the Recast Proposal affecting P&E, including greater clarity in the scope and definitions, improved coherence with the new Directive on waste, clarification of producer registration, clarification of WEEE reporting and a greater emphasis on inspection and enforcement.

However, some members raised concerns over the clarity and consistency of certain new and changed terms and definitions in the Recast Proposal, in particular on the definition and interpretation of 'producer' and in being clear on what is WEEE. Concern was raised on the extent to which requirements on disposal and treatment will address leakage of WEEE and preventing hazardous substances from returning to the environment or recycled products. The targets for collection and recovery are challenging, but changes to ensure consistent monitoring are welcome. The new requirements on inspection are welcome, but there is a challenge to deliver effective inspection at different stages of WEEE management and in integrating such inspection with that under other regimes, such as the waste shipment Regulation.

The findings in this report should be considered by all of those involved in the debate on the Recast Proposal. IMPEL members are invited to consider its conclusions with regard to their specific experience and communicate their findings to official governmental channels involved in the Council discussions. The Commission is also invited to consider the conclusions as are the co-legislators, the Council and European Parliament, in order to assist in ensuring a revised regulatory regime that is practicable and enforceable.

**Disclaimer:**

This report is the result of a project within the IMPEL-Network. The content does not necessarily represent the view of the national administrations or the Commission.

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## **1. Introduction**

This report sets out the findings and conclusions of an IMPEL project established to examine the practicability and enforceability issues arising from the 2008 Commission proposal for a recast of the WEEE Directive. The project used the practicability and enforceability checklist developed by IMPEL in 2007 to examine the proposal, drawing on the experience of similar work undertaken by IMPEL in 2008 on the IPPC Recast Proposal.

The aim of the project is that the findings set out in this report should be considered by all of those involved in the debate on the Recast Proposal, including IMPEL, the Commission and the co-legislators, the Council and European Parliament, in order to assist in ensuring a revised regulatory regime that is practicable and enforceable.

The views of IMPEL members were collected through the use of a questionnaire and the results of this and other issues were discussed by members at a project workshop. This report begins by providing a brief background to IMPEL's work on practicability and enforceability and an introduction to the WEEE Recast Proposal. It then continues by presenting the findings and conclusions on the specific issues arising from the proposal.

## **2. IMPEL's work on practicability and enforceability**

In order to encourage policymakers to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process IMPEL has produced a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States. The checklist was adopted by the IMPEL Plenary Meeting in December 2006, and published on the IMPEL website:

[http://ec.europa.eu/environment/impel/cluster\\_3.htm](http://ec.europa.eu/environment/impel/cluster_3.htm)

IMPEL has used the practicability and enforceability (P&E) Checklist to examine the practicability and enforceability issues relating to IMPEL members work in relation to the IPPC Recast Proposal. The experience of undertaking this assessment formed the basis of a workshop between IMPEL members and Commission officials in September 2008 to identify lessons learnt and ways forward for co-operation between the Commission and IMPEL. The workshop concluded that it was important for IMPEL to continue to use the P&E checklist to examine Commission proposals and this project on the WEEE Recast Proposal, therefore, forms the second occasion on which IMPEL will have undertaken such an assessment. A copy of the final project report of the assessment of the IPPC Recast Proposal can be found at:

[http://ec.europa.eu/environment/impel/pdf/checklis2\\_report.pdf](http://ec.europa.eu/environment/impel/pdf/checklis2_report.pdf)

This IMPEL project on the practicability and enforceability of the WEEE Recast Proposal uses questions identified in the practicability and enforceability checklist to examine key aspects of the Commission proposal. The project **does not intend to interfere with the normal European legislative procedure**, rather it seeks to provide guidance to the co-legislators on the **areas which need particular attention during the legislative process** with regard to the **objectives of practicability and enforceability** based on the **practical experiences** of experts from IMPEL member countries. The Project report highlights the key practicability and enforceability questions and areas which, in the opinion of the IMPEL experts, will need particular attention. By this the project aims at informing and supporting the legislative process.

### **3. The proposed revision to the WEEE Directive**

In December 2008 the Commission published a proposal to amend the WEEE Directive. This Directive has important consequences for the work of many IMPEL members. It is important, therefore, for the practicability and enforceability of the proposal to be assessed. A copy of the proposal can be found at:

[http://ec.europa.eu/environment/waste/weee/pdf/com\\_2008\\_810.pdf](http://ec.europa.eu/environment/waste/weee/pdf/com_2008_810.pdf)

Importantly, the WEEE Recast Proposal was published alongside a Recast Proposal of the Restriction in Hazardous Substances (RoHS) Directive to which it makes strong cross-reference (such as in defining the scope of the WEEE Directive). A copy of the RoHS Recast Proposal:

[http://ec.europa.eu/environment/waste/weee/pdf/com\\_2008\\_809.pdf](http://ec.europa.eu/environment/waste/weee/pdf/com_2008_809.pdf)

The WEEE Recast Proposal also cross-refers (such as drawing on definitions) to the new Directive on Waste. A copy of this Directive can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:EN:PDF>

The WEEE recast proposal introduces changes to a number of areas of the existing Directive. The principle changes are to:

- harmonise the registration and reporting obligations for producers and make national registers of producers inter-operational so that producers need only register and report in one Member State for all their activities in the EU;
- clarify the scope and definitions;
- change the collection target from the current 4kg/capita per year to a variable target set at 65% of the average weight of products placed on the market in the two preceding years;
- introduce a combined recycling and re-use target;
- set minimum inspection requirements for Member States to strengthen the enforcement of the Directive and include minimum monitoring requirements for shipping WEEE;
- make Member States, where appropriate, encourage producers to finance all the costs of separate collection;

- allow producers to show to consumers at the time of sale the cost of collection, treatment and disposal of products in an environmentally-sound manner, without time limitation and for all equipments.

Information about the proposal, including the full text, accompanying Communication, Q&A and Impact Assessment can be found at:

<http://ec.europa.eu/environment/waste/weee/>

and at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/764&format=HTML&aged=0&language=EN&guiLanguage=en>

In particular, the Q&A discusses the problems that the proposed changes are seeking to address and the benefits that are anticipated.

The proposed revision to the WEEE Directive is a **recast proposal**. This means that it contains three types of text:

- Text from one or more of the original Directives that is not amended (in the proposal document this text is ‘white’).
- Text that is amended as minor changes (double struck through or double underlined) or a ‘technical adaptation’ (in the proposal document this text is marked with ☒ and ☐ at the end of the relevant text).
- Substantive amendments. In the proposal document this text is grey shaded.

These differences are important in that only the substantive amendments (grey shaded) are being considered in co-decision by the Council and European Parliament. This project focuses on the substantive amendments that are subject to co-decision.

## 4. Methodology

Views of IMPEL members on the practicability and enforceability of the Recast Proposal were obtained using a questionnaire distributed to IMPEL co-ordinators. The questionnaire was devised and agreed by an Advisory Group overseeing the progress of the project. A copy of the questionnaire is provided in Annex I to this report.

The questionnaire was structured according to major themes in the Commission proposal. Each theme was briefly introduced identifying the Articles in the proposal to which it refers. For each theme key questions drawing on the themes from the Practicability and Enforceability Checklist were used as the basis to develop questions specific to the detailed provisions of the legislation.

The questionnaire addressed the range of significant changes proposed for the WEEE Directive. It was important to obtain views from those involved in all of these different parts of the regulatory cycle. IMPEL co-ordinators were, therefore, encouraged to obtain a range of views. Respondents were also encouraged to base their answers on practical experience and illustrate their answers with practical

examples. Responses to the questionnaire were received from 14 IMPEL members from 13 countries. A list of the responding institutions is given in Annex II.

On 27 April 2009 a workshop was held at the IMPEL offices in Brussels to discuss the findings of the questionnaire responses and elaborate conclusions relating to the practicability and enforceability of the WEEE Recast Proposal. There were 15 participants at the workshop from 10 member countries and the European Commission was present at the meeting as observer. Details are given in Annex III. Overall, therefore, participation in the project through the questionnaire and workshop included participation from 16 IMPEL members from 14 Member States/Candidate Countries (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, The Netherlands, Portugal, Slovakia, Slovenia, Sweden and the United Kingdom).

This report is structured following the Articles of the Recast Proposal that are subject to significant amendment. It summarises the range of comments made in responses to the questionnaire, discussion at the workshop and conclusions reached, including practical examples where these were highlighted.

## **5. Main findings of the project**

### **5.1 Main findings and follow-up of the report**

The project highlighted a range of practicability and enforceability issues concerning the WEEE Recast Proposal. The report, therefore, contains a discussion of a range of issues raised in the Recast Proposal in the following sections.

The WEEE Directive has been a challenge to implement in many Member States, from ensuring effective collection and treatment to controlling shipments outside the EU. Therefore, measures to improve the Directive are welcome. Most IMPEL members stressed positive views on many changes in the Recast Proposal affecting practicability and enforceability, including greater clarity in the scope and definitions, improved coherence with the new Directive on waste, clarification of producer registration, clarification of WEEE reporting and a greater emphasis on inspection and enforcement.

However, some members raised concerns over the clarity and consistency of certain new and changed terms and definitions in the Recast Proposal, in particular on the definition and interpretation of ‘producer’ and in being clear on what is WEEE. Concern was raised on the extent to which requirements on disposal and treatment will address leakage of WEEE and preventing hazardous substances from returning to the environment or recycled products. The targets for collection and recovery are challenging, but changes to ensure consistent monitoring are welcome. The new requirements on inspection are welcome, but there is a challenge to deliver effective inspection at different stages of WEEE management and in integrating such inspection with that under other regimes, such as the waste shipment Regulation.

The findings in this report should be considered by all of those involved in the debate on the Recast Proposal. IMPEL members are invited to consider its conclusions with regard to their specific experience and communicate their findings to official governmental channels involved in the Council discussions. The Commission is also invited to consider the conclusions as are the co-legislators, the Council and European Parliament, in order to assist in ensuring a revised regulatory regime that is practicable and enforceable.

## 5.2 Scope

The proposal defines the scope of the Directive in Article 2. This now cross-referenced to the proposed revision to RoHS, together with clarifications of exemptions.

### *Questions from questionnaire*

- Is the scope of the proposal clear in defining what is to be addressed in the Directive and are the specific inclusions and exemptions operationally practical?

Some members felt that the scope of the Recast Proposal is clear. In particular, it is thought sensible to seek to harmonise the scope of the WEEE and RoHS Directives.

Others felt that the scope was clearer, but not totally clear. There should be less doubt over whether certain types of equipment are classed as EEE, and the new scope may also solve the problem of distinguishing between categories B2B and B2C. There may however still be issues with the categorisation of certain types of EEE according to Annex I of the RoHS Directive. One member felt that there should only be very specific exemptions from the scope, such as space equipment. Another disagreed with Para 4 which states that: ‘WEEE shall be classified as waste from private households or from users other than private households. The classification of types of WEEE into these categories shall be laid down’, suggesting instead that classification should be for EEE rather than WEEE. Another felt that in terms of scope *per se* there was no improvement in clarification, but that there was some improved clarity on exclusions (but in some cases the exclusions are still not clear enough and would benefit from rephrasing). Yet another felt that moving the scoping issue from the WEEE Directive to the RoHS Directive will not solve the problem of lack of transparency in scope, such as the lack of specifying the goal of each exclusion criterion. Further practical examples are highlighted in Box 1 below.

Others expressed serious concerns over the clarity of scope. It was noted that whilst the WEEE Recast Proposal refers to Annex I of the RoHS Directive Recast Proposal for its scope, the RoHS Directive Recast Proposal refers for its scope to both Annexes I (broad categories of WEEE) and II (binding list of types of WEEE). This would therefore imply a broader scope for the WEEE Directive than for the RoHS Directive, which could create problems. Inconsistencies between WEEE and RoHS are unacceptable, and that the ‘binding list’ in Annex II is much too short and should be stated as a non-binding list for both RoHS and WEEE. Concern was expressed over the binding list in Annex II of the RoHS Directive, pointing out that discussions to add new kinds of equipment may result in delays in new equipment being added to the list. A similar concern was raised over new products coming onto the market.

Problems could arise from the non-exhaustive nature of the Annex (how often should it be amended, and how user-friendly will it be for those responsible for scoping issues in the Member States?), and from the definition of products both within and outside the scope (which could increase the number of products in the 'grey' area).

The binding list is, therefore, a problem in that it would not be responsive to technological change. Equally, a product that ought to have been included may simply have been overlooked. If the list is to be regularly updated there needs to be a clear mechanism for doing this. If the list is not to be regularly reviewed, its entries will, over time, start to look dated and rather arbitrary, e.g. it would have made little sense to include VCRs but not DVD players for instance. It should be noted that the WEEE Directive (and Recast Proposal) is adopted under Article 175 of the Treaty, so there is scope for Member States to go beyond the minimum list. However, if Member States can add to the scope for WEEE (but not RoHS) there is a risk that the harmonised approach would be lost within and between Member States which would cause confusion and complicate pan-EU monitoring and compliance, not least with respect to an importer into several Member States.

For all these reasons, a non-binding (i.e. indicative) list would be more appropriate. One approach would be rather than include a binding minimum list of items in the scope, it might be easier to list (in generic terms) types of electrical/electronic items that are excluded. These exclusions should be in one place. This approach has been used for the Electromagnetic Compatibility (EMC) Directive (2004/108/EC). More broadly, an alternative could be a generic one, i.e. that all waste EEE is counted as WEEE unless it is specifically excluded (e.g. items whose function is not primarily electrical, but have a minor electrical component). This is an approach already taken in at least one Member State.

One member argues that all exemptions of Article 2 (3) should be introduced in the Annex to the Directive in order to promote clarity of the scope. Also Article 2 (3) (e) is not clear in relation to what is exempted from the scope, i.e. implanted and at the same time infected medical devices or implanted or infected devices?

The concern was also raised that Article 2 (4) is inconsistent with an Article 3 (l). On one hand it is clear that equipment cannot be classified at the same time as B2B and B2C. On the other hand classification of types of EEE into B2B and B2C categories means a lot of work for the Committee (see Article 18). It is argued, therefore, that clear definitions of B2B and B2C are required.

Finally, with regard to the list of WEEE, there is the question of whether waste EEE not included in the list can be counted towards the targets required under Article 11 (see below).

## Box 1 Examples of practical problems related to scope

The issue of external adapters/chargers which would appear to fall under the scope of WEEE but not under the scope of RoHS Annex II, although possibly under the scope of RoHS Annex I, as either group 3 or group 4. On a similar issue, concerns arise over the exemption of 'equipment which is not intended to be placed on the market as a single functional or commercial unit'. This is unclear, for example, for some components, cables, accessories, spare parts and multifunctional products. It is suggested that an explicit exclusion should be included in Article 2.3.

There is concern over the 'highly speculative' wording of Article 3(b), which exempts from the scope 'equipment which is specifically designed as part of another type of equipment that does not fall within the scope of this Directive and can fulfil its function only if it is part of that equipment'. What constitutes a 'functional unit' will be open to debate. Many IT products which are sold straight to end users with consumer packaging and installation instructions (e.g. hard drives and sound cards) would therefore be excluded from the scope, which is not in line with the environmental purposes of the Directive.

In relation to Article 12 (financing in respect of WEEE from private households), it is argued that from the point of view of enforceability it is very important to know whether a product is a household one or not when it is placed on the market; if a household product, the producer must provide a guarantee, whereas this is not the case for products other than for private households. Previous advice was that the term 'household' should not be understood literally. If this is the case, the Directive should clarify this.

It is suggested that there should be rewording of Article 2.3, from 'intended' for military to 'destined' for military, in order to avoid loopholes.

There is another point of concern related to exclusions. Article 2.3 should include 'large-scale stationary industrial tools'. However, there is a need to clarify what is meant by 'large-scale stationary industrial tools' as there are assumptions in its practical interpretation, e.g. referring to fixed installations.

The lack of an exclusion for luminaries for households will have a positive impact, as all lighting equipment is now included in the Directive's scope, with the single exception of filament bulbs.

There is concern that there is no *de minimis* provision for producers. Registering and monitoring producers with very small market shares is inefficient and enforcement action is impractical against such businesses.

### 5.3 Definitions

Definitions are set out in Article 3. In some cases definitions are made through cross-reference to other legislation, e.g. 'EEE' cross referenced to the ROHS proposal and 'prevention', 're-use', 'preparing for reuse', 'recycling', 'recovery', 'disposal', 'treatment', 'hazardous waste', 'collection' and 'separate treatment' to the new Directive on waste.

New definitions are also included, such as 'making available on the market', 'placing on the market' and 'remove'.

#### *Questions from questionnaire*

- Are all the key terms in the proposal properly and clearly defined? Is there experience of other definitions from other sources that provide greater clarity than those in the proposal?
- Do the changes to the existing definitions in the proposal provide greater clarity and consistency than in the existing legislation? Where new definitions are added, are these clear and consistent with the existing legislation?
- Does the cross-reference to the new Directive on Waste in particular aid in practical coherence of waste management?
- Are there any definitions which are not consistent with those in related legislation?

#### *General points on definitions*

Some members considered that in general the definitions set out in Article 3 are clear. Comments were made by these members that the definitions improve consistency with definitions in existing legislation and will increase legal certainty and aid proper implementation of the Directive. There is approval that a large number of definitions are brought into line with the definitions in the new Directive on waste.

Others do not feel that all terms are clearly and properly defined, although the definitions are somewhat clearer, before going on to raise a number of concerns (see below).

#### *Definition of producer*

Currently there is significant variation in the practical interpretation of 'producer'. For example, two Member States of similar size have registered about 3,000 and 600 producers respectively and have significant differences in the average EEE per capita per year placed on the market. These differences are more than a simple variation in the market situation between Member States, but reflect interpretation of definitions in the WEEE Directive and data collection issues. Therefore, improving and clarifying the definition of 'producer' is important. By linking the definition of producer to the European market might stimulate greater consistency between Member States, but this is far from certain.

There is concern that the proposed change to the definition of 'producer' will be a key problem. The proposed definition of 'producer' refers only to placing EEE on the market from a third country onto the Community Market. This would lead to an

exclusive 'European producer-definition'. Member states will be forced to apply their national provision to European producers and importers, wherever they are based. This will cause problems in controlling or enforcing the law referring to financial responsibility and furthermore in financing collection and treatment of WEEE. The current collection and treatment systems will be negatively affected. These problems arise most in Member States with high importation rates. How will producers be regulated when they have no presence in the particular Member State? It is not clear who is a producer where EEE is placed onto the Community market from a third country from a producer from a third country. Different importation rates within Member States will also cause distortions of competition. It would be more straightforward to define 'producer' at the national level to facilitate national monitoring and supervision of producer obligations.

Some members would, therefore, prefer the term 'producer' to be defined at the national level to facilitate national monitoring and supervision of producer obligations. A related concern is that it may be difficult to require producers to meet national legislation on WEEE if they place EEE on the market in Member States where they do not have a physical presence (i.e. a seat or office). A similar point is made that the feasibility of inspections and enforcement is called into question in connection with the new definition of 'producer' (EU producer instead of Member State producer). Under the new definition, companies importing from Member States are no longer considered producers, and that only a company importing from outside the EU for the 'first time' is considered a producer – this 'first time' element will be difficult to monitor and control. The new definition will have a huge impact on some Member States' registers, which currently include more than 50 per cent of (old definition) importer-type producers.

Another member, on the other hand, views the new definition of an EU 'producer' in a positive light.

A more European approach to registering producers will require greater sharing of information between Member States. It could be beneficial to add a requirement to the proposal requiring Member States to share information on this issue and otherwise work together to help implement the Directive where appropriate.

#### *Definition of WEEE*

There is concern about the implications of the definition of WEEE. The existing definition could be interpreted as only applying to whole appliances and their components, and not parts after the first stage of recycling (i.e. shredding). In this case, Article 10.2 (equivalent conditions required for recovery outside the EU) would apply only to WEEE as whole appliances and not to shredder materials or dismantled parts, meaning that no proof need be provided that treatment takes place under similar conditions to those in the EU. However, it should be noted that if the waste contains hazardous material it would be regulation under the waste shipment Regulation.

It is also important to note that once shredded, it is not possible to distinguish WEEE waste streams from other waste streams, e.g. those derived from end of life vehicles.

It is also suggested that there should be an extension to the definition of WEEE from private households, to take into account dual-use equipment such as laptops and PCs.

One member considers that a new definition of WEEE from users other than from private households should be elaborated.

### *Other definitions*

Other issues raised include:

- defining ‘making available on the market’ is helpful. This is defined as when a product is made first available on the Community market. It is clear that this does not mean simple importation into the Community, as this is often via major ports for distribution to other Member States.
- however, it is not clear whether the new definition for ‘making available on the market’ will mean organisations that import for their own use will be classified as producers.
- ‘remove’ is not clearly defined, and could lead to uncertainty in enforcement. Conversely another member felt that the new definition would result in hazardous substances, preparations and components being contained as an identifiable stream or identifiable part of a stream at the end of the treatment process, therefore providing greater clarity for inspections and enforcement.
- some definitions may have important consequences on the calculation and achievement of targets, and that attention should be paid to a clear and common understanding of these definitions in particular.
- Due to inconsistencies between Article 2 (4) and Article 3 (1), Article 3 (1) should be reworded.
- the definition of ‘market’ is a problem.
- clear definitions of ‘material-recycled’ and ‘energy-recycled’ would be beneficial, along with a common procedure for the calculation of figures, in order to enable comparisons of the performance of Member States.
- there is no definition of ‘weight’ which is critical in monitoring and comparative assessment for meeting targets. It is noted that methodologies for defining ‘weight’ will be developed under Comitology. It is, therefore, recommended that IMPEL members contribute their experience on this to help the Commission develop its thinking on this issue.
- a definition of ‘large scale industrial tools’ would be useful.

### *Cross-reference to the new Directive on waste*

The vast majority of members welcome the cross-reference to the new Directive on waste. Some feel that the cross-reference is essential to improve the practical coherence of waste management and that a coherent definition of 'reuse' in particular creates more legal certainty regarding the granting of permits for, and the execution of, activities. The cross-referencing will be particularly helpful for treatment facilities and reprocessors (as well as regulators) who will be familiar with the framework Directive definitions. Another member, on the other hand, is reserving judgement on the value of the cross-reference, as the new Directive on waste has only recently been adopted and is yet to be fully implemented.

One suggestion is that Case Law from the waste shipment Regulation or the packaging Directive could be applicable in the WEEE field.

### *Inconsistencies in definitions*

Many members did not identify any definitions which are not consistent with those in related legislation. However, it is noted that the definition of 'placing on the market' is different between the WEEE Directive and the REACH Regulation; the WEEE definition is favoured.

In comparable Directives (e.g. Directive 2006/66/EC on waste batteries, Directive 2000/53/EC on end of life vehicles) the producer is defined as the one who launches a product. Thus it is argued that the Recast Proposal should revisit the definition, otherwise a paradox situation occurs, that for those EEE with batteries from the same source inside two different products, different producers could be made responsible.

### **Box 2 Examples of practical issues arising from definitions**

<p>One example is that of companies donating old but functional products (e.g. computers or mobile phones) to organisations which in turn send this equipment to third countries (e.g. in Africa), either for charitable purposes or for resale. It is unclear whether equipment of this type should be classed as waste or products, how it should be reported to the national register, and whether permission should be sought to transport such equipment to countries outside the EU.</p>
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## 5.4 Disposal, Transport and Treatment

Article 6 establishes a prohibition on the disposal of untreated separately collected WEEE and that collection and transport of separately collected WEEE is done in a way that optimises re-use and recycling and confinement of hazardous substances. Article 8 sets out the requirements for treatment.

### *Questions from questionnaire*

- Is the proposal clear on the requirements for disposal and transport?
- Are there particular practical implications of these requirements regarding disposal and transport?

### *Clarity of requirements for disposal, transport and treatment*

Many members feel that the proposal is clear on the requirements for disposal and transport and that it is ‘clearer than before’. Another agrees (and indeed has already banned disposal of untreated WEEE under its national legislation), but caveats its response by suggesting the insertion of the words ‘preparing for’ before the word ‘re-use’ in paragraph 2 in order to ensure that collected EEE is always considered as a waste stream.

However, it is also argued that Article 6 is unclear and leaves a large amount of latitude for the Member State authorities which have to translate this article into national law. Conversely, it was also thought that keeping this Article fairly ‘high level’ and not introducing prescriptive requirements on how WEEE is to be moved, stored, handled, etc. is beneficial.

More specifically, one member felt that the prohibition on the disposal of untreated separately collected WEEE is clear, but agrees that the provision is very general and could lead to different levels of implementation in the Member States. One member puts a more optimistic spin on the latitude given to Member States, suggesting that they will ‘hopefully’ clarify the provision in their national legislation. Another, on the other hand, agrees with a non-prescriptive approach and suggests that specific requirements for disposal and transport are not required in Article 6.

### *Practical implications for disposal, transport and treatment*

Many members do not currently foresee any additional practical implications of the requirements regarding disposal and transport. Indeed, in at least one Member State the requirements are already in law.

However, it is also suggested that Article 6 is not very ‘usable’ in its current form – the word ‘optimises’ is open to interpretation and the term ‘hazardous’ is not always clear in relation to WEEE. Links between Annex II and the obligation to remove batteries or external electric cables, for instance, are unclear. Article 6 can only be enforced if there is proper registration and monitoring of separately collected and transported WEEE, or if municipalities and retailers are obliged to hand over collected equipment to producers. This would reduce current levels of leakage of

WEEE through illegal export (e.g. mixing of separately collected WEEE with metals, or use of incorrect EWC codes) and environmentally-unsound treatment. A suggestion is made to include a statement on non export to non-OECD (e.g. African) countries in the Directive.

There is concern that the proposal does not go far enough in addressing hazardous elements of WEEE. Even with the key elements of equipment set out in Annex II removed, remaining fractions of the waste may have low levels of hazardous substances and products derived from these, e.g. plastics, might be RoHS compliant, but still have contaminants derived from WEEE that have become diluted. It was suggested, therefore, that Annex II is not comprehensive enough, although it does contain the general requirement for hazardous substances to be compliant with the obligations of the waste framework Directive. One suggestion is that the general requirement in Article 6 that Member States ensure collection and transport is carried out in such a way as to optimise re-use and recycling and the confinement of hazardous substances could also be made to apply to Article 8 on treatment. However, Annex II is not amended from the current Directive and, therefore, is not part of the debate on the Recast Proposal. The Commission is to gather information regarding Annex II and it could, in future, be amended through Comitology. It is recommended that IMPEL members provide practical experience regarding the scope and interpretation of Annex II to the Commission to support this process.

One member suggests that as in most cases WEEE is transported outside the EU as reusable second hand EEE (i.e. non-waste), it will result in WEEE being transported without any restrictions on waste and waste treatment as the WEEE is, at shipment, classified as EEE. As the final destination of this waste is not known, illegal treatment or landfill is possible, as is recycling of material that is not compliant with RoHS.

It was stressed that there is a need to be clear when WEEE is considered to have been separately collected. Fly-tipped WEEE that is cleared up by a local authority is now likely to be considered to have been separately collected and subject to treatment.

One member also predicts that ‘optimises’ and ‘confinement’ could be the subject of ‘endless discussions’. It cites a similar problem that existed with end-of-life vehicles, where recyclers argued that the crushing of an ELV and the breaking of glass did not diminish the recycling potential as the glass was confined in the bottom of the cargo truck. The national law in this case has recently been changed to clarify the transport conditions.

It is also argued that expectations will be high in terms of the supervision by Member States and municipalities over waste streams and their transportation. The example of waste collected to be reconditioned and sold to second-hand markets (e.g. in Africa) is raised again; it is unclear how this will work in practice. For instance, should Member States make it possible to re-use collected waste and how should these waste streams and flows be reported to the national register (reported as collected each time it is collected and reported as sold every time the product is put on the market)?

## 5.5 Collection Rate

Article 7 establishes the objective of a collection rate of 65% of total weight of WEEE by 2016. Transitional arrangements may be made and a common methodology for calculating total weight may be established through Comitology.

### *Questions from questionnaire*

- Are there practical issues concerning the determination of the requirements of Article 7 (e.g. calculating total weight)?
- Are there practical issues concerning the 65% or 2016 objective?

### *Practical issues concerning the determination of the requirements of Article 7*

According to one member, the proposed collection rate will provide more raw materials, proper treatment will reduce environmental and health risks, and the target will also prevent the illegal export of WEEE.

However, it is argued that the 65% target expressed as a percentage of the average weight of EEE placed on the market in the two preceding years in that Member State is not the best method for calculating the total weight; as most equipment has a longer lifetime than two years, the amount of equipment that has become waste would be a more appropriate baseline for calculation. The calculation should vary according to different EEE characteristics and could be based over a 5-10 year period. There is a wider concern that it is very difficult to obtain exact figures of the amount of EEE put on the market.

Conversely, another member considered that basing the target on the average of two years' data seems a sensible compromise between keeping data at a manageable level whilst still trying to smooth out market fluctuations. However, one potential problem would be if there was a significant economic downturn (as now). WEEE arisings would be expected to decline yet targets would be based on EEE placed on the market during the previous two (good) years.

One member also questions the wisdom of linking the collection rate with the quantity of sales. There is currently no sound definition of 'weight' in the case of EEE put on the market (e.g. does it include accessories and batteries?). If WEEE from B2B (professional equipment) is included in the target for separate collection, producers have the opportunity to use heavy professional equipment (such as servers and vending machines) to fulfil their obligations rather than concentrating on household products which should be the first priority. It is proposed that a harmonised definition of weight, to be applied in all Member States, would allow comparable data.

It is suggested that the number and severity of practical issues that will arise will depend on the common methodology and transitional arrangements established through the comitology process. The common methodology would be helpful and it would need to take account of distance selling and the market share associated with unregistered producers (if any). The importance of IMPEL members contributing to

the development of a Comitology decision on ‘weight’ is highlighted in section 5.2 above.

The need for a similar level of enforcement across Member States is highlighted in order to be able to compare results between Member States; currently there are significant differences in the number of registered producers and the amount of EEE put on the market.

#### *Practical issues concerning the 65% or 2016 objective*

One member considered that the establishment of a European producer-definition is inconsistent with setting up a national collection rate objective. If a European producer gets rid of his obligations at the national level, Member States would have problems with meeting of the collection target.

Some members consider that the 65% collection target is too high or, at least, ‘very challenging’. It is questioned whether there is a sound evidence base to support such a high assumed rate of discard. If there is, have future rates of discard been modelled and what is the sensitivity in relation to changes in demographics and technology? In the Commission’s IA, it is assumed that 13% of WEEE goes to landfill; this would be very difficult to assess and one member calls into question the accuracy of the evidence base. It is, therefore, felt that the target is ‘optimistic’ (current unofficial data suggests that that that particular country’s current rate of collection is below 25%), and ‘ambitious’ for a large number of Member States (its own separate collection rate in 2007 was around 26%). Another member considers that a maximum collection rate of 40% is achievable and that even by including the amount of reused WEEE to the collection rate only an increase of 2-4% is possible. It is argued that a flat-rate target for all Member States has no justification, and the robustness of the calculation methodology presented in the impact assessment is questioned. One member is currently carrying out its own impact assessment. Preliminary estimates suggest that levels of WEEE are around 50-60% of the EEE sold in the previous year. A collection rate in the range of 43-51% would be more appropriate in this case.

One member considered that a minimum collection rate of 65% should be applied only for WEEE containing the most hazardous substances, such as cooling appliances and lamps containing mercury. A lower collection rate of 40% should be applied for other WEEE.

Some members suggest that calculation will prove difficult. There is concern that as ‘placing on the market’ is defined in terms of the European rather than the national market, it will be difficult for Member States to calculate the actual amount placed on their national market (producers may not know exactly in which Member States their products will end up). It is suggested that Member States could be obliged to start reporting on their collection rates in 2014, to ensure that problems are identified in advance of the 2016 deadline.

It is reasonable to assume that more B2B equipment will be captured and reported within the system. Some may be concerned that to hit the target, larger B2B WEEE may be collected in preference to extra B2C WEEE. The collection systems and incentives are different so this is unlikely to become a serious issue. However, even if

it were, it would have no impact on the tonnage of WEEE collected although it would reduce the overall number of items of WEEE. It is not possible to predict if this would have a negative environmental impact.

It is also suggested that there are many leaks in the collection, recycling and monitoring systems, that not all of these are illegal and that some are extremely difficult to tackle as they involve the behaviour of individuals. Some difficulties in achieving the objectives and monitoring are therefore foreseeable, although these may not be critical.

## 5.6 Permits

Article 9 sets out the permitting requirements for establishments carrying out treatment.

### *Questions from questionnaire*

- Are the requirements relating to permitting clear? Are there practical issues concerning permitting that should be highlighted?

Many members state that the requirements relating to permitting are clear and there are no practical issues of note to be highlighted. The requirements are easy to understand, but questions may arise over the resources of the authorities responsible for inspections.

However, one member raises a number of concerns. It proposes that general requirements are needed for shredding. Fractions from different shredders can look the same but have very different actual content; they should therefore be treated in different ways, but if they are transported to a treatment facility that facility may not be aware of this. Issues can also arise for inspectors, due to the difficulties in determining whether fractions contain hazardous materials or not. It also suggests that if all WEEE is to be treated according to Annex II, this must be stated much more firmly (e.g. Annex II is the minimum standard for all collected WEEE, and exemptions for the purpose of environmental protection must be notified to the Commission in advance). Article 9 in its current form could be used to avoid the obligations of Annex II, without any clear sanctions. An additional point should be added to the remit of the inspection, namely 'final recovery/disposal of Annex II substances'.

## 5.7 Shipments of WEEE

Article 10 states that treatment of WEEE may be undertaken outside of the Member State and WEEE exported from the Community as long as requirements in Commission Regulations 1013/2006 and 1418/2007 are met. Minimum monitoring requirements for shipments of WEEE are set out in Annex I.

### *Questions from questionnaire*

- Are the requirements set out in Article 10 clear and practicable? Is the coherence between Article 10 and Annex I clear and coherence of the proposal with Regulations 1013/2006 and 1418/2007?

### *Clarity and practicability of the requirements in Article 10*

Ensuring practical enforcement of shipment controls is important – for environmental and economic reasons. For example, in at least one Member State industry has established facilities to process the levels of WEEE expected to arise from implementation of the WEEE Directive, but less than expected is arriving at such facilities as considerable amounts are going to export.

Some members feel that the requirements set out in Article 10 and Annex I are clear and practicable, for example, they are based on the Correspondence Guidelines on Shipment of WEEE. One member suggests that the criteria are clear, but should only be used only for shipments of WEEE between Member States. Exports of collected WEEE (including functional WEEE) to third countries should be always considered as shipments of waste even if the criteria are met, to contribute to reducing illegal exports of WEEE.

One member feels that the requirements are clear, but will be difficult to carry out. It queries which organisations would be responsible for implementation: only those working with transboundary shipments of waste, or those working with transboundary shipments of waste in collaboration with those working on producer responsibility for EEE.

Some members express concern that the meaning of treatment under ‘equivalent conditions’ to those in the EU is unclear and either difficult or impossible to prove and therefore to enforce. This could be clarified by stating minimum conditions (e.g. Annex II and III) that must be met. However, it should be noted that the reference to ‘equivalent conditions’ is in the current WEEE Directive.

It is important to note that it is the responsibility of the exporter to prove equivalent conditions are met with regard to specific treatment to be undertaken (it is not an overall judgement on a third country per se). This would require traceability of what happens to exported WEEE and for Member State authorities to have confidence in this. Only with this can the WEEE count towards the targets in the Recast Proposal. One Member State has, for example, developed a similar traceability approach for the export of packaging waste.

Although it is foreseen that rules relating to equivalent conditions will be established under Comitology, there is no deadline for the laying down these rules. This is a major potential loophole which would create economic pressure to export WEEE for 'treatment' abroad, in particular to non-OECD countries (for which shipment is regulated under the Waste Shipment Regulation). It will be important for IMPEL members to set out their practical experience relating to export supervision to assist in rule development.

*Coherence between Article 10, Annex I and Regulations 1013/2006 and 1418/2007*

It is suggested that the addition of Annex 1 is a good first step towards reducing illegal exports, and that requirements (and associated guidance, e.g. related to safety, expected lifetime and marketability) could be added for companies that prepare equipment for reuse.

However, some members feel that the coherence between Article 10 and Annex I is not clear enough. There is room for confusion between Article 10 and Annex II. If the requirement under Article 10 to 'prove that treatment took place under conditions that are equivalent to the requirements of this directive' is referring to Annex II, this should be explicitly stated. One member goes further, stating that it sees no relationship between Article 10 and Annex I. Article 10 refers to export of waste, unequivocally declared as 'waste', whereas Annex I is a guideline to distinguish between second hand appliances and waste, with the material itself initially being declared as 'second hand'.

It is also suggested that there is a lack of clarity in Article 20(2) as to which shipments should be subject to Annex I. Following the logic of Regulation 1013/2006 it should apply to all shipments, including those within a country.

One member perceives the intention of the WEEE Directive to be that for WEEE shipped outside the EU, supervision of the fulfilment of WEEE Directive's recycling requirements would be covered by Regulations 1013/2006 and 1418/2007. However, a loophole would exist, as the waste shipment Regulation (WSR) does not require notification for all shipments of WEEE, e.g. green waste. Even where notifications are required, the competent authorities that implement the WSR may not be able to demand that all requirements of the WEEE Directive are fulfilled. Indeed currently it is practically very difficult to manage all of the notifications under the WSR. The conclusion in point 4 of Annex I of the WEEE Recast Proposal, which automatically presumes that a shipment lacking the required documentation is a shipment of hazardous waste and is thus illegal, is too blunt an instrument; this conclusion can only be made after an investigation of the specific case.

It is also suggested that the information in Annex 1 may already be covered by those working with transboundary shipments of waste. There is also a perceived problem with the first point in the Annex, in that the material that is re-used should already be collected (and reported) as waste; it is unclear how this should be defined.

## 5.8 Recovery Targets

Article 11 establishes requirements for recovery and preparation for re-use and recovery for different categories of WEEE to be established as a weight percentage of separately collected WEEE.

### *Questions from questionnaire*

- Are there particular practical issues concerning the measurement and determination of these targets?
- Are there particular practical issues concerning the achievement of the targets themselves?

### *Practical issues concerning the measurement and determination of targets*

Currently there can be significant problems in monitoring WEEE movement. For example, collection sites can record numbers of WEEE equipment, a transport company may note the weight of the WEEE and the recycling facility might record the number of lorry loads arriving. Apart from difficulties in understanding WEEE data, this leaves the system open to abuse, with the potential for leakage of WEEE at various stages. To deal with this issue, some Member States undertake periodic studies to determine the average weight of WEEE appliances. This can change significantly over time (e.g. for television sets). Therefore, achieving a more consistent approach to recording WEEE across the management chain is important.

The importance of how the recycled weight will be measured is stressed, as the first step of recovery (dismantling/shredding) does not result in homogenous materials, and at each step of the recovery process some part of the WEEE is disposed of.

Conversely, others are concerned that it will be almost impossible to verify if the recovery targets are met; following WEEE from dismantling to final recovery is very difficult and time/resource-intensive, many existing schemes focus on reuse mainly for charitable purposes, and outside official take-back schemes other methods of reuse (e.g. second-hand sales or e-auctions) are difficult to monitor. One member does however applaud the emphasis on reuse in terms of the environmental benefits.

Some members do not see any particular practical issues concerning the measurement and determination of the targets. One member noted that current Regulations already allow for evidence of reuse to be off set by producers against their notified collection obligations. A common understanding of when 'prepared for reuse' should be counted would, however, be useful.

One member feels that the final target according to Article 11 will be too high due to the way that the 65% collection target is calculated. Another stresses the need for a single methodology for all Member States, and for all recyclers in the Member States, to calculate the recycling targets. The targets will be harder to reach for some categories than for others (e.g. category 7), and it questions why there is a specific target for discharge lamps.

It is suggested that reuse should be allowed only within Member States, or only in the Member State where the WEEE was collected; reuse in third countries is similar to a placing a new product to the market.

It is also suggested that there be some rewording of paragraph 2, to ensure that it also covers WEEE sent for preparation for reuse: ‘These targets are calculated as weight percentage of separately collected WEEE that is sent for preparation for re-use and to recovery facilities.’

It is pointed out that only producers are responsible for the targets in Annex I. This raises concerns that the lack of obligations for WEEE collected by non-producers means that they can focus on only high-value elements of the WEEE (e.g. copper or stainless steel), reducing their operating costs and turning them into competitors for the official collection system and recyclers.

### **Box 3 Examples of practical issues concerning the measurement and determination of targets**

Non-household consumers such as businesses may object to reuse, as the supervised destruction of computer equipment is standard practice in order to ensure data privacy.

#### *Practical issues concerning the targets and the achievement of the targets*

The target is set at the point where WEEE is sent for recovery. This excludes WEEE which is previously prepared for re-use (which could be exported). It might be more beneficial to set a target at an earlier stage after WEEE collection. As it stands, there are no targets for re-use. Old, working equipment can be exported as a product. This is difficult to address as such equipment is not waste, but there is concern over abuse of re-use in this regard.

It is also important to note that many waste treatment companies also act as brokers, with only a proportion of the WEEE they receive being treated. This presents serious concerns regarding leakage.

One member considers that the proposal to increase the existing recovery targets each by 5% is practicable as the reuse of WEEE will be included in the recovery targets. However, an exception from the increase of recovery targets should be foreseen for used fluorescent lamps due to the fact that a reuse of them does not take place. However, conversely another expresses concern that allowing ‘preparation for reuse’ to contribute to the recovery targets (in addition to recycling) will encourage producers and importers to set aside part of the collected WEEE for re-use instead of material recycling, to achieve the recycling goals more cheaply.

However, another states that achievement of the 65% collection targets will be difficult as it is too high, and the lifetime of different EEE is different and frequently too long. It is suggested that the new targets will not be realistic for the new Member States before 2020. It is important to note that the proposed collection target is not a flat target per product category, but an overall target for WEEE. There is also a lack

of clarity over which authority will be responsible for ensuring the target is reached, how they should achieve this, and what sanctions will be used if a Member State misses the target.

It is also suggested that achievement of the targets may be difficult if there is no market for waste obtained from dismantling, as the targets are set as fixed ratios and are not flexible.

The impact assessment's estimate that 5-10% of collected equipment is reusable is also considered to be debatable; in some cases the majority of reusable equipment is placed directly on the second hand market and does not go to collection points, and a study has shown that only 1-2% of collected equipment is therefore reusable.

It is also noted that fluctuations of the economic situation and the development of new product types could affect achievement of the targets.

#### **Box 4 Examples of practical issues concerning the achievement of targets**

A TV monitor is collected through the official take back system. Part of it will be dismantled, shredded and recycled. Another part undergoes a quick test, possibly only visual, which qualifies as preparation for re-use, and is then sold to a 'distributor' of second hand TVs for the European market. Instead, the trader ships everything to Africa. The effect will be such that part of the waste/second hand appliances that are shipped illegally to Africa will have entered the take back-system, at least on paper, and will be counted towards achievement of the recovery targets.

An example is that of glass from CRT screens. The market for this waste is limited, and since it forms a substantial part of the weight of waste TVs, this could endanger the recycling targets.

There is concern over a lack of clarity on who an exporter should report to in order to prove that treatment took place under equivalent conditions. This will be an issue in the case of shipments of waste according to Article 18 of Regulation 1013/2006, when no notification and consent of authorities is required.

### **5.9 Registration, Information and Reporting**

Article 16 would require Member States to draw up a register of producers which would form the basis for monitoring compliance with financial obligations under Articles 12 and 13. The format of the register and frequency of reporting can be established using the Comitology procedure. The key obligations concerning information collection and reporting are little altered, except that data on separately collected WEEE must be expressed by weight and no longer by numbers.

#### *Questions from questionnaire*

- Are the requirements relating to the registration, information and reporting clear? Are they practicable?

### *Registration requirements*

One member considers that Article 16 is clear, and that establishing a register of producers will significantly reduce the administrative burden to producers without lowering the level of environmental protection.

Others suggest that the requirements relating to registration are difficult to fulfil. One notes that current registers are already completed and that adaption to new requirements would take considerable financial and organizational effort. Others argue that it is unclear how the register will work. It is noted that there is no indication of a timeframe for establishing a register, no indication of which body will establish the format of registration, and no indication about the frequency of reporting and other related issues. There is also concern that the new registration process in tandem with the new definition of 'producer' will result in a costly duplication of effort (modification of existing registers and re-registration of producers). There is concern about the practicality of Member States ensuring that any producer on their territory can enter in their national register all relevant information, including reporting requirements and fees, reflecting its activities across all other Member States. It is also not clear whether fees would be transferred from one Member State to another.

A number of members also doubt the feasibility of harmonised/standardised registers. Allowing the register to be operated by collective producer responsibility schemes is a total reversal of the existing system, and there is the question of whether a register can also be a collective scheme. There is concern that if a collective system runs a register only for its membership this would result in only partial market data (it suggests instead that national data consolidation should be undertaken by government bodies). However, the proposal states that registers **can** be operated by collective producer responsibility schemes, but this is not a requirement, so if this is a problem in a Member State, then it can be addressed at national level. For example, if a collective system runs the sole register in a Member State, it will have access to sensitive market data and may reduce competition, which would have negative impacts for consumers. It is also argued that registers will not be economically competitive with collective schemes.

It is also argued that the registration requirement contains legal problems. The key issue is the arrangements for waste management, rather than fulfilment of the financial obligation. There is also a question of how the authorities in a Member State can obtain and monitor information on how many products from a specific company will enter their market, and how they can impose any legal requirements on a foreign company. Finally there is the question of which body will collect and distribute the financial obligations, who will define the amounts, and to whom will the money be given.

Members did not highlight any potential problems with the reporting requirements.

## **Box 5 Examples of practical issues concerning the registration, information and reporting requirements**

A producer (company) releases products that end up in several Member States. This company cannot know where and how many products in 10 different categories end up in other Member States, as there may be numerous distributors over which the company has no control.

There is a need for an agreed approach for assessing WEEE-derived materials present in materials sent for recycling. Does allowance need to be made for process losses/efficiencies?

### **5.10 Inspection and compliance assessment by competent authorities**

Article 20 significantly amends the requirements with regard to inspection and monitoring. Monitoring and inspections should be appropriate to ensure compliance with the Directive. Inspection should cover, at least, export of WEEE outside the Community and operations at treatment facilities. Detailed requirements on monitoring the shipments of WEEE are set out in Annex I.

#### *Questions from questionnaire*

- Are the requirements for monitoring and inspection justified in view of its contents and purpose?
- Are the requirements relating to monitoring and inspection clear (including the detailed specifications in Annex I)? Are they practicable?

Many members state that the requirements as laid down are justified. It is thought that the minimum inspection requirements proposed (in particular the new Annex I establishing minimum monitoring requirements for shipment of WEEE) will strengthen enforcement of the WEEE Directive, although it is argued that Article 20 and Annex I should not require or imply that every shipment is to be checked as there must be scope for Member States to adopt risk-based monitoring strategies. One member, on the other hand, suggests that terms such as ‘appropriate inspections’ (which is the term used in the current Directive) amount only to good intentions and do not bind the Member States to do anything in a particular way. While some consideration might be given to setting quantified targets for inspection effort, this is fraught with practical difficulties and, certainly, a uniform approach is not appropriate.

Many members, however, feel that the requirements relating to monitoring and inspection are clear and practicable. Another reserves judgement, stating that monitoring and inspection would not be totally straightforward to carry out. The requirements would be clear if collected WEEE should only be treated according to Annex II both inside and outside the EU. Also the requirements in points 1-2 are not always very clear, but are sufficient. Point 3 is superfluous as it repeats the CMR obligation which is already laid down in all national laws; point 4 should be a simple reference to the waste shipment Regulation (1013/2006), not going into more detail –

the absence of documents or the presence of documents that fail to prove that appliances are fully functional should lead the inspector to conclude that the shipment is waste. To improve clarity of the requirements and assist in settling interpretation disputes, it is suggested that the waste shipment guidelines on e-waste could be given legal status as an annex to the new WEEE Directive. Other options would be to create a guidance document (in collaboration with development organisations, refurbishers and NGOs) or to create a link with product requirements for new equipment (CE marking).

The detailed specification in Annex I which distinguishes between EEE and WEEE is welcomed. One member considers that Annex I is '100% practical' and will close the gap caused by using the Correspondents' Guidelines as a reference. Another argues that meeting the criteria in Annex I should be the responsibility of the producer as well as the holder of EEE (WEEE), because responsibility for WEEE take-back, reuse and recycling rests with producers. It is suggested that an exception or clarification may be useful to allow EEE to be sent as personal luggage, but without creating a loophole. However, one member suggests that whilst Annex I seems at first glance to be a powerful tool for inspection services, point 4 states that the authorities 'shall presume' that a shipment is WEEE instead of EEE, but stops short of concluding that the shipment 'is' waste. The fear is that this will result in every case having to be dealt with individually in court to clarify what is waste and what is second-hand. It may also result in more EEE (including WEEE) being exported for reuse overseas, increasing the pressure on inspection services to control this outflow. Annex I will not be a powerful enough instrument for this purpose.

One member feels that the requirements are not sufficient as they do not clearly cover the monitoring of waste streams that come from the treatment of WEEE in European treatment facilities and are then exported for further recovery; European companies that export such waste should demonstrate what percentage of the material will be disposed of overseas.

There is also concern that the only way to inspect and monitor shipments of WEEE that do not require a notification according to the waste shipment Regulation is by random checks by the competent authorities and customs, which is not the most effective tool. Fulfilment of the Annex I requirements would also in practice be controlled by random checks by customs. More comprehensive monitoring of shipments of WEEE would need more intensive cooperation between the authorities supervising producer responsibility schemes and the competent authorities of the waste shipment Regulation. However, it should also be noted that some other aspects of WEEE management operations may be subject to inspection under other waste Directives, although it should be noted that site based inspection tend to focus on the local environmental impacts of operations, not on the impacts of waste moving through the facility to elsewhere. Having said this, it might be appropriate to make more explicit reference to the potential for inspection at different stages of WEEE collection, transport, treatment and shipping as the waste shipment Regulation does with regard to inspection at points of origin, transport and export, etc.

## **Box 6 Examples of possible issues relating to monitoring and inspection requirements**

Concerns are raised over enforcement. The example is given of the current waste shipment Regulation, which also mandates cooperation and control, but which some Member States are very lax in enforcing. This becomes a regional problem and creates a giant loophole in the system, undermining the efforts of other Member States.

### **5.11 Responsibilities for stakeholders**

Across the proposed Directive operators have a range of responsibilities that they have to fulfil regarding collection, distribution, treatment, recycling, etc, of WEEE.

#### *Questions from questionnaire*

- When considering all of the responsibilities on stakeholders, are these clear and are they enforceable? Do you have any practical concerns arising from the responsibilities placed on the stakeholders?

Key points raised by members include:

- the proposed stakeholder responsibilities are clear and enforceable, and with no practical concerns.
- the proposed stakeholder responsibilities seem a little more extensive than at present, but that they are will probably be beneficial (and necessary).
- the stakeholder responsibilities do not differ greatly from the current situation, which makes enforcement difficult due to the sheer number of operators (producers and retailers) involved.
- there are concerns over stakeholder responsibilities connected to their obligation arising from the collection targets, which are too high.
- there is concern about Article 16 on registration, which one member feels is unfeasible and unenforceable in its current form.
- the targets have been set based on the market situation in the EU15 and do not reflect the different situation in the new Member States.
- there is concern over the use of collective systems and the role of the individual producers that participate in them. If the collective system violates the Directive, would all individual producers need to be sanctioned?
- enforcement may not be feasible in the case of producers not from an EU Member State and that the supervision and exchange of information across borders will be complicated.

## 5.12 Other issues

This section summarises any other issues that IMPEL members felt were important, but are not addressed in the previous sections.

### *Questions from questionnaire*

- What are the most positive changes in the proposal that assist in its practical implementation and enforcement?
- Are there any other points relating to practicability and enforceability of the WEEE recast proposal that you wish to raise?
- Do you have other views or suggestions for other important actions at EU level to increase the practicability and enforceability of the proposal?

### *The most positive changes in the proposal*

The following are cited as the most positive changes in the proposal:

- Minimum requirements relating to monitoring and inspection (which should assist in practical implementation and enforcement).
- The legal status of Annex I (though this could be further improved by an obligation to always treat WEEE according to Annex II).
- Greater clarity on scope, categorisation and definitions.
- The new collection target.
- Harmonised registration and reporting obligations for producers.
- Introduction of combined recycling and re-use targets.
- Encouragement for producers to finance all costs related to collection facilities for WEEE from private households.

### *Other points relating to practicability and enforcement*

It is suggested that a clear distinction should be made between private household equipment and other equipment. A related point is raised that the Directive suggests that equipment for professional use is not within its scope, and that the titles of the 10 categories should be neutral in terms of private/commercial applications. It is suggested that a set of clear definitions on EEE with several main qualitative criteria would be more practical and useful than a list of products. The titles of the categories cause confusion, and that they should be renamed with titles indicating the functionalities of the EEE concerned. The scoping criteria should be addressed in Article 2 rather than in the titles.

Other key points raised include:

- the definition of ‘producer’ should be based on the national producer.

- the proposal does not fit with other product-related provisions (e.g. Directive on batteries, Directive on ELVs) and will change the basic principles of the one current system, which has worked very well in most areas since 2005 and will affect practicability.
- more attention is required on ensuring and facilitating proper enforcement and cooperation between countries on enforcement (Articles on this in the waste shipment Regulation have been very useful).
- the preambles could be improved. A first point could be added along the lines of the waste shipment Regulation, stating clearly that protection of the environment is more important than international trade. Space could be dedicated in the preambles to reflecting the particular concern of EU WEEE being shipped to Africa.
- it is almost inevitable that through changes in technology or social practices, loopholes in the Directive will be found and exploited sooner or later. The Directive should therefore make provision for quick intermediate revisions to close emerging gaps quickly.

*Other actions that could be taken at EU level to increase practicability and enforcement*

Key points raised by members include:

- the existing method for calculating the collection target is sufficient and should not be changed; the 4kg per inhabitant target in the current WEEE Directive should only be enlarged.
- the scope should have as few exemptions as possible and that these should be very precise.
- Article 14 could advise users and collectors of WEEE to cut the electrical cables ('Cut it Loose') when they discard broken and unusable appliances, to ensure that the appliance is really discarded and cannot be falsely shipped abroad as a second hand good.
- practice shows that cooperation, communication and information exchange varies greatly between Member States. Mandatory, detailed and regular Member State reporting to the Commission on Article 20 (inspection and monitoring) activities is suggested.
- inclusion of a stronger commitment for all Member States with regard to enforcement (e.g. targets to be achieved) is suggested.
- there could be a blanket ban on export of WEEE for treatment in non-OECD countries; this would vastly simplify enforcement of the waste shipment Regulation, as well as reducing costs.

- a clear and common understanding of the related definitions will be crucial to determine how the proposed treatments target should be met.
- there is a question of the wisdom of promoting the reuse of whole appliances, given that fast-moving technological developments mean shorter and shorter lifespan for most EEE, and also given that the majority of illegal WEEE shipments are undertaken under the banner of ‘shipments for reuse’. Some WEEE recyclers perform destruction of unsold, end-of-shelf EEE, which goes directly against the promotion of reuse; the Directive could address this.
- Annex II could usefully include requirements on selective treatment. In order to do this, a clear link would need to be established between categories of EEE and the EWL codes.
- a key question remains over how the Member States should work more generally on the prevention of waste.

## Annex I: The Questionnaire

### *Contextual information*

1. Please give your name(s) and contact details and indicate your position/expertise	
2. Please give the name of your organisation	
3. What territory does your organisation cover?	
4. What field(s) of competence does your organisation cover (WEEE, Waste Shipment Regulation, other waste, etc)?	

### *Scope*

*The proposal defines the scope of the Directive in Article 2. This now cross-references to the proposed revision to RoHS, together with clarifications of exemptions.*

1. Is the scope of the proposal clear in defining what is to be addressed in the Directive and are the specific inclusions and exemptions operationally practical?

*General comments*

*Practical examples*

### *Definitions*

*Definitions are set out in Article 3. In some cases definitions are made through cross-reference to other legislation, e.g. 'EEE' cross referenced to the RoHS proposal and 'prevention', 're-use', 'preparing for reuse', 'recycling', 'recovery', 'disposal', 'treatment', 'hazardous waste', 'collection' and 'separate treatment' to the new Directive on Waste.*

*New definitions are also included, such as 'making available on the market', 'placing on the market' and 'remove'.*

2. Are all the key terms in the proposal properly and clearly defined? Is there experience of other definitions from other sources that provide greater clarity than those in the proposal?

*General comments*

*Practical examples*

3. Do the changes to the existing definitions in the proposal provide greater clarity and consistency than in the existing legislation? Where new definitions are added, are these clear and consistent with the existing legislation?

*General comments*

*Practical examples*

4. Does the cross-reference to the new Directive on Waste in particular aid in practical coherence of waste management?

*General comments*

*Practical examples*

5. Are there any definitions which are not consistent with those in related legislation?

*General comments*

*Practical examples*

### ***Disposal and Transport***

*Article 6 establishes a prohibition on the disposal of untreated separately collected WEEE and that collection and transport of separately collected WEEE is done in a way that optimises re-use and recycling and confinement of hazardous substances.*

6. Is the proposal clear on the requirements for disposal and transport?

*General comments*

*Practical examples*

7. Are there particular practical implications of these requirements regarding disposal and transport?

*General comments*

*Practical examples*

### ***Collection Rate***

*Article 7 establishes the objective of a collection rate of 65% of total weight of WEEE by 2016. Transitional arrangements may be made and a common methodology for calculating total weight may be established through Comitology.*

8. Are there practical issues concerning the determination of the requirements of Article 7 (e.g. calculating total weight)?

*General comments*

*Practical examples*

9. Are there practical issues concerning the 65% or 2016 objective?

*General comments*

*Practical examples*

### **Permits**

*Article 9 sets out the permitting requirements for establishments carrying out treatment.*

10. Are the requirements relating to permitting clear? Are there practical issues concerning permitting that should be highlighted?

<i>General comments</i>
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<i>Practical examples</i>
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### **Shipments of WEEE**

*Article 10 states that treatment of WEEE may be undertaken outside of the Member State and WEEE exported from the Community as long as requirements in Commission Regulations 1013/2006 and 1418/2007 are met. Minimum monitoring requirements for shipments of WEEE are set out in Annex I.*

11. Are the requirements set out in Article 10 clear and practicable? Is the coherence between Article 10 and Annex I clear and coherence of the proposal with Regulations 1013/2006 and 1418/2007?

<i>General comments</i>
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<i>Practical examples</i>
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### **Recovery Targets**

*Article 11 establishes requirements for recovery and preparation for re-use and recovery for different categories of WEEE to be established as a weight percentage of separately collected WEEE.*

12. Are there particular practical issues concerning the measurement and determination of these targets?

<i>General comments</i>
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<i>Practical examples</i>
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13. Are there particular practical issues concerning the achievement of the targets themselves?

<i>General comments</i>
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<i>Practical examples</i>
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***Registration, Information and Reporting***

*Article 16 would require Member States to draw up a register of producers which would form the basis for monitoring compliance with financial obligations under Articles 12 and 13. The format of the register and frequency of reporting can be established using the Comitology procedure. The key obligations concerning information collection and reporting are little altered, except that data on separately collected WEEE must be expressed by weight and no longer by numbers.*

14. Are the requirements relating to the registration, information and reporting clear? Are they practicable?

<i>General comments</i>
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<i>Practical examples</i>
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***Inspection and compliance assessment by competent authorities***

*Article 20 significantly amends the requirements with regard to inspection and monitoring. Monitoring and inspections should be appropriate to ensure compliance with the Directive. Inspection should cover, at least, export of WEEE outside the Community and operations at treatment facilities. Further details on these requirements are set out in Annexes I and II.*

15. Are the requirements for monitoring and inspection justified in view of its contents and purpose?

<i>General comments</i>
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<i>Practical examples</i>
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16. Are the requirements relating to monitoring and inspection clear (including the detailed specifications in Annex I)? Are they practicable?

*General comments*

*Practical examples*

***Responsibilities for stakeholders***

*Across the proposed Directive operators have a range of responsibilities that they have to fulfil regarding collection, distribution, treatment, recycling, etc, of WEEE.*

17. When considering all of the responsibilities on stakeholders, are these clear and are they enforceable? Do you have any practical concerns arising from the responsibilities placed on the stakeholders?

*General comments*

*Practical examples*

***Any other issues***

*The questions above have focused on the major themes of the proposal. However, there may be other issues that you think are important to highlight.*

18. What are the most positive changes in the proposal that assist in its practical implementation and enforcement?

*General comments*

*Practical examples*

19. Are there any other points relating to practicability and enforceability of the WEEE recast proposal that you wish to raise?

*General comments*

*Practical examples*

20. Do you have other views or suggestions for other important actions at EU level to increase the practicability and enforceability of the proposal?

*General comments*

*Practical examples*

## **Annex II: Respondents to the Questionnaire**

Responses to the questionnaire were received from the following organisations:

- **Austria:** Federal Ministry of Agriculture and Forestry, Environment and Water Management - BMLFUW
- **Belgium:** Flanders: Environmental Inspection Division, Department of Environment, Nature and Energy
- **Belgium:** Flanders: OVAM Public Waste Agency of Flanders
- **Bulgaria:** Ministry of environment and water
- **Croatia:** Ministry of environmental protection, physical planning and construction, Directorate for Inspection
- **Czech Republic:** Czech Environmental Inspectorate, Department of Waste Management
- **Finland:** Finnish Environment Institute (SYKE)
- **Hungary:** Ministry of Environment and Water
- **The Netherlands:** VROM Inspectorate
- **Portugal:** Inspeção-Geral do Ambiente e Ordenamento do Território
- **Slovakia:** Ministry of Environment
- **Slovenia:** Inspectorate RS for Environment and Spatial Planning
- **Sweden:** Swedish Environmental Protection Agency
- **United Kingdom:** Environment Agency

### **Annex III: Participants at the Project Workshop**

<b>Name</b>	<b>Organisation</b>	<b>Country</b>
Bart Palmans	Environmental Inspections Division - Flemish Region	Belgium
Catherine van Nieuwenhove	Brussel Leefmilieu	Belgium
Nathalie Tacquenier	Brussel Leefmilieu	Belgium
Kameliya Georgieva	Ministry of Environment and Water	Bulgaria
Petya Peneva	Ministry of Environment and Water	Bulgaria
Mirela Perovic	Ministry of Environmental Protection, Physical Planning and Construction	Croatia
Martin Zemek	Czech Environmental Inspectorate	Czech Republic
Rene Rajasalu	Estonian Environmental Inspectorate	Estonia
Klaus Wilke	BSU Hamburg	Germany
Carl Huijbregts	VROM Inspectorate	Netherlands
Anna Dobrócsyová	Ministry of Environment of the Slovak Republic	Slovakia
Jon Engström	Swedish Environmental Protection Agency	Sweden
John Burns	Environment Agency	United Kingdom
Andrew Farmer	Institute for European Environmental Policy	United Kingdom
Orsolya Csorba	European Commission	