JOINT POSITION PAPER ON WEEE RECAST SECOND READING

Brussels, 26 July 2011

EXECUTIVE SUMMARY

In view of the European Institutions second reading on the Recast Waste Electrical and Electronic Equipment Directive, the undersigned industry organisations, which represent producers of electrical and electronic equipment across all categories, call on regulators to ensure that the recast leads to improved environmental protection as well as greater efficiency and more effective enforcement of the Directive. It is vital that the Recast does not create additional administrative burden, without any environmental benefit, for producers to comply with given the goals of the Recast and that they have made investments, both financial and human, in ensuring compliance with the Directive.

Industry is principally concerned with the following proposals arising from first reading:

- Extending the scope and reorganising the existing ten scope categories
- Applying the collection rate to producers and basing it on "EEE placed on the market"
- Extending producers' financing obligations for collection beyond agreed collection points
- Limiting legal shipments of used professional EEE to shipments for direct reuse or under warranty only
- Unsatisfactory provisions regarding transparency of collection/recycling costs
- Having a separate preparation for reuse target
- The broad definition of WEEE from private households
- The lack of clarity on how the producer will be defined in the directive and how a workable registration model will be ensured
- Certain details of the proposals to develop eco-design and treatment standards

Industry calls for:

- Support for the Council proposal to maintain the existing ten scope categories and perform an impact assessment before any decision on the extension of the scope
- Support for the Council and EP proposals for scope exclusions
- Support for the EP position to make the financial guarantee verifiable and auditable
- Support for the EP proposal for a Collection Rate based on "WEEE generated" and the target continuing to apply to Member States
- Amending the Council position on shipments of used EEE with a view to stopping illegal transboundary shipments while allowing legitimate shipments for repair, refurbishment, remanufacturing of professional products beyond the warranty period
- To maintain that Member States shall allow, but not oblige, producers to voluntarily show the collection and recycling costs
- Support for the Council proposal to include the target for Preparation-for-Reuse within the overall recycling target
- A clarification of the definition of producer taking into account that certain provisions of WEEE require a national approach while others require a European approach
- Support for the EP proposal to introduce a "local resident agent" in either case
- Support for the EP proposal for collection, treatment and recycling standards
- Support for the Council proposal for the promotion of Eco Design of products
- Improve the definition of WEEE from private households

We provide industry's detailed comments and proposals hereafter:

CONTENTS

1. SCOPE

Clear and unambiguous scope provisions are the essential prerequisite for a workable directive, its enforceability and therefore for realising its environmental objectives. Substantial changes to the scope of WEEE would in our view require an additional **impact assessment** to evaluate costs and benefits and to identify the areas where most environment gains can be achieved, while avoiding a disruption of the clarity on the scope that has been created since the adoption of the existing Directive. An impact assessment is also relevant to study the issue of historical waste for potential new products coming into scope and its far reaching consequences (i.e.: start date of financing obligations).

Therefore, industry is critical to any change to the **existing ten product categories**, since the proposed reshuffle into fewer categories will risk inhibit innovation in recycling technologies, be a barrier to maximising recycling results and could prevent environmental improvements, including in product design. Advances in recycling technology could change the required collection groups in order to optimize recycling and provide purer recyclates. It is vital that the collection groups can adapt to future changes and do not hold back progress.

The proposed approach of fewer categories raises also further concerns:

- Although collection may be organised according to fewer categories in a number of Member States, differences in the practical organisation of collection must be allowed from Member State to Member State due to the subsidiarity principle.
- The terminology of the proposed categories of “small” and “large” appliances is ambiguous and cannot provide the necessary legal certainty for companies.
- A system of fewer categories could create an increase in the administrative burden and additional costs without environmental benefit, such as for changing company internal reporting systems or national registers. Verifying products according to their length, height or width will create an additional unnecessary administrative burden.

We support the EP and Council proposals to introduce a comprehensive set of **scope exclusions.**
Article 2.3 of the first reading position of the Council, however, is misleading in terms of timelines and could result in including the same equipment for six years and excluding it after six years. This creates legal uncertainty. All scope exclusions need to apply as of entry into force of the recast directive, as proposed by the European Parliament.

Also, granted scope exclusions should not be undermined by including such just-excluded-equipment via the **illustrative product lists**. This is the case a number of product examples included in the EP first reading report, such as:
"Large electrical and electronic industrial tools and machinery except large-scale stationary industrial tools and non-road mobile machinery intended exclusively for professional users", "large appliances for generating or transferring current (e.g. generators, transformers, uninterruptable power supplies (UPS), inverters)", "large monitoring and control instruments" or *"large measuring instruments and installations (e.g. scales, fixed machines)".*

Illustrative product lists may be helpful as guidance, but they need to reflect reality and need to be representative for collection practices in EU-27 Member States to stimulate improvements in recycling technologies and environmental results.

Industry recommendations:

- Industry supports the Council's proposal that the Commission conduct **an impact assessment within 3 years** after entry into force of the recast Directive and propose any necessary scope changes, if appropriate, following the results of this assessment (art.2.1.a and 2.5).
- **Industry consequently supports annex I of the Council's first reading position**, which maintains the existing ten scope categories.
- **We** however **oppose article 2.1.b and annexes III and IV of the Council's first reading position**.
- **Industry opposes the EP proposal for an open scope (amendment 12 of the EP first reading position)**, since it would presuppose the outcome and findings of such an impact assessment.
- We support the proposed **scope exclusions** of amendment 13 of the EP first reading position as well as of article 2.3 and 2.4 of the Council first reading positions. These should all apply as of entry into force of recast Directive, as it is proposed by the EP, but not as of the moment of extending the scope to all EEE as it could be (mis-) understood from the Council's first reading position.
- While we do not oppose re-introducing the existing **annex I.B-illustrative product list** (= annex II of the Council's first reading position), the new illustrative product list (i.e.: annex IV of the first reading position of the Council) should be deleted as it does not reflect reality. In any case, any illustrative product list needs to be consistent with granted scope exclusions.
- Industry supports clarifying the **definitions of the new scope exclusions**.

2. FINANCING

There are currently two aspects regarding the proposals for changing financing rules, which raise industry's concerns given the practical consequences related to changes in these fields:

a. Financing of household collection (**art. 12, art.5.3, recital 19 Council first reading position**)
b. Making the guarantee auditable and verifiable (**EP amendment 50 on article 12.2a**)

a. Financing household collection (art. 12, art.5.3, recital 19)

Both the Council and the European Parliament have in their first reading made suggestions to address the need to improve the collection levels of WEEE, particularly for some categories such as small equipment. While industry supports the intentions of increasing the amounts of WEEE collected, treated and reported there are important considerations that should be taken into account to ensure a fair and workable solution to improving Household collection results:

- **Higher collection rates can be achieved through full reporting of all WEEE flows.** There are many actors who collect WEEE from households for commercial reasons. Extending the responsibility to properly treat and report WEEE also to these actors has the potential to improve collection rates.
- **Expanding producer financing to household collection is asking producers to sign a "blank cheque".** The proposal to have producers finance the costs of collection of B2C WEEE performed by municipalities and associated awareness campaigns would enable municipalities and other actors to set c***o***sts for collection activities without contract, control or limit.
- **Article 5.3 in its present form is ambiguous and can lead to the situation of insufficient possibility to control costs occurring for collection of WEEE from private households. Besides it could limit the possibility of setting up competitive collection systems.** In such a situation, it is not unlikely that charges for proximity to household collection, including awareness campaigns either directly or via establishing a collection levy, could be based on arbitrary estimates rather than the real costs of collection. In addition, article 5.3 is not coherent with article 5.2.c.
- The assumption *"more money- more WEEE collected*" is not necessarily true. Good collection results depend on many more factors than available financial resources, such as the consumer's decision what to do with his old appliance or the physical organisation of take back.
- The recast should not impede those countries that already have functioning alternative models of raising funds that comply with the current Directive and the recommendations listed above.

Industry recommendations:

- **Higher collection rates can be achieved by full reporting of all WEEE flows by all actors.**
- **Controls should be established to ensure that the financial resources raised for collection do not exceed the actual cost incurred.** This should also involve an assessment of th*e* incremental costs of collect*i*on in a Member State.
- **Any financial resources generated shall be exclusively used for the purpose of improving WEEE collection**. The financial resources shall be available only to operators legally obliged to collect WEEE.
- **The legislation should allow any party to set up and operate the collection of WEEE from private households to collection facilities, as long as proper treatment and reporting is ensured. Therefore, article 5.3 should be deleted.**

b. The guarantee (EP amendment 50 on article 12.2a)

The guarantee requirements under WEEE can form a significant part of the financial obligation under the WEEE legislation. The current phrasing in the Directive is unclear and could lead to significant differences in the financial obligation depending on the interpretation of the member state or the individual producer.

Industry recommendation:

Industry supports amendment 50 of the EP first reading report on article 12.2a, which requests the Commission to make the guarantee verifiable and auditable.
Amendment 50 should be re-introduced in second reading.

3. TRANSPARENCY OF COLLECTION AND RECYCLING COSTS (article 14.1 Council first reading position)

For some products or sectors, specifically for those products that have little material value and high collection and recycling costs, such as lighting, it is beneficial to have the option to make the costs of the collection and recycling transparent to buyers.
The industry supports an approach which leaves a possibility for an individual producer to choose whether to make the cost transparent in Member States or not.

Industry recommendation:

Article 14.1 of the Directive should maintain that **Member States shall allow, but not oblige, producers to voluntarily show the costs** of WEEE management.

4. COLLECTION RATE/TARGET AND ITS CALCULATION

By lowering the **ambition of the target**, and proposing derogations for certain Member States, the Council has indicated that one target, based on "Placed on the Market", for all Member States has its own drawbacks. A collection target based on the amount of EEE Placed on Market would lead to a de facto collection target that in some Member States would be impossible to achieve, due to the large increases in sales of EEE during recent years and because consumers keep the EEE they have purchased for a longer time and therefore not sufficient WEEE is available. This is not an environmental problem as such. As long as the products have not been disposed of by consumers they are not WEEE and do not create an environmental problem.

A collection target based on the amount of "WEEE Generated", as proposed by the European Parliament, has distinct advantages compared to a target based on EEE placed on the market:

- **The responsibility for achieving the target stays with the actor that has the enforcement power, i.e. the Member State**. Member States should be responsible for meeting the collection target because producers cannot control all the other actors who collect WEEE to make a profit. In addition, producers do not have enforcement powers. Member States, on the other hand, are the only ones in control of the key instruments to both organise and enforce the collection target, and therefore should retain responsibility for achieving these targets.

- A target based on WEEE generated would require **all WEEE flows to be measured and included in the collection rate.** For B2C, this would mean that any WEEE leaving the private household would be taken into account in the calculation of the target. This includes all WEEE that has been properly treated regardless of whether it

was treated by a recycling system managed by producers or whether it was treated by other WEEE actors[1] or recyclers, any WEEE that was sent to export or discarded in any other way.

- **The new target,** as proposed by the European Parliament, **would fit all Member States**. **There would be no need to negotiate different target levels for individual Member States** because a collection target based on the amount of WEEE Generated will ensure that an achievable level is set for each Member State, since it is based on the real amounts of WEEE. A target based on the amount of WEEE Generated would take into account differences between Member States that influence the real generation of waste, such as history, economic development, differences in technology development; differences in product life cycles; and differences in consumer behaviour. The responsibility and execution of calculating WEEE generated on the bases of a common methodology should lie with the Member State.

Industry recommendations:

- **Industry supports amendments 28-31 of the EP first reading position and proposes to re-introduce them in second reading.**
- **Industry also supports amendment 32 except for filament bulbs**, which have no negative environmental impact.
- In addition, **industry suggests making additions to the text in Article 7 paragraph 3a to support the methodology for calculating WEEE generated**. For this purpose, industry suggests using the information that Member States have obtained following their obligations arising from other EU waste legislation, such as:
  - **Regulation 2150/2002 on Waste Statistics,**
  - **Directive 2008/98/EC on Waste or**
  - **Regulation 1013/2006 on Waste Shipment.**

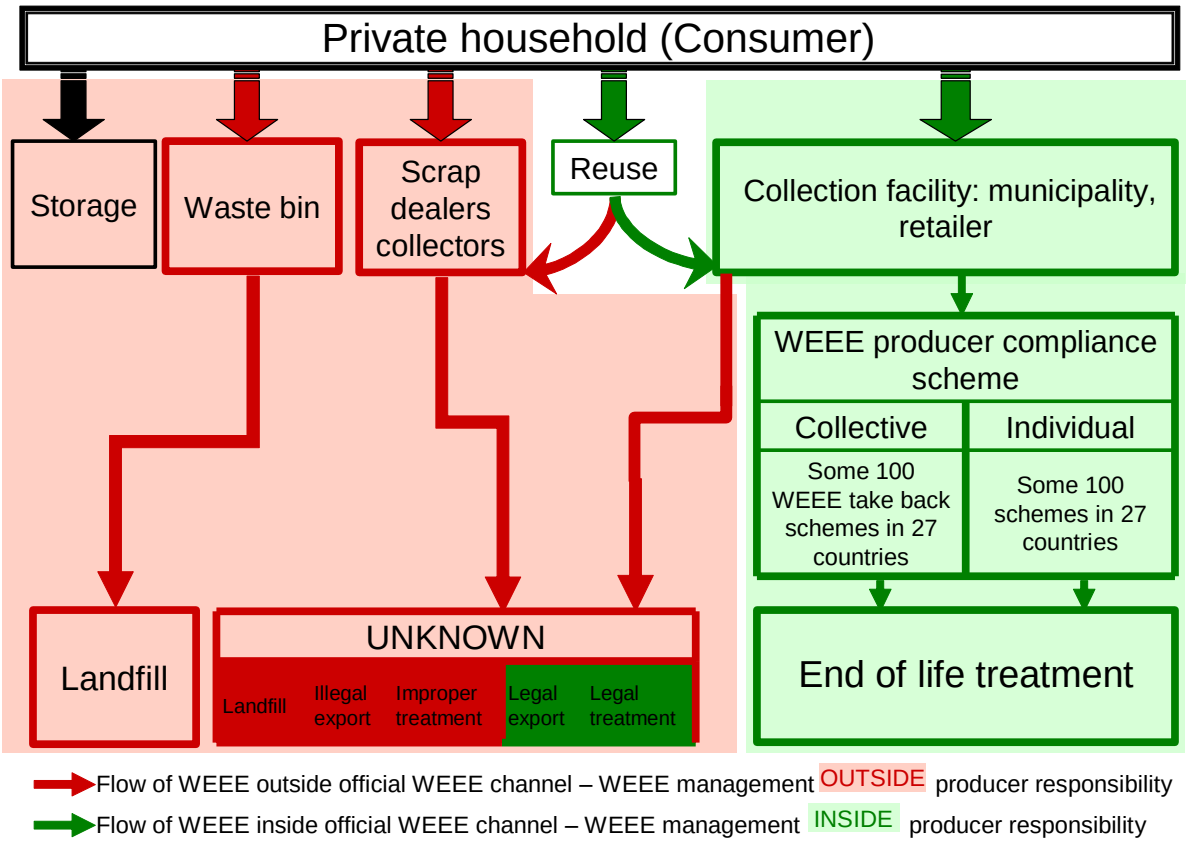
  The data derived from these EU legislations are providing a useful basis for the calculation of WEEE generated.

[1] *"WEEE actor" means any natural or legal person that collects, treats, purchases and/or sells WEEE.*

5. ALL WEEE FLOWS TO MEASURE THE COLLECTION RATE

There are massive flows of WEEE outside the producer owned WEEE systems.

Overview on actors and flows of WEEE from private households (B2C) in practice



In April 2008, the combined Dutch WEEE recycling systems published a research report[2] that showed that out of a total of 18.5 kg of WEEE that is generated per inhabitant per year, 14.8 kg (80%) is recycled but only 5.7kg (31%) is recycled by the producer funded WEEE systems, with the majority of WEEE recycled by commercial collectors. There are many 'official' and 'unofficial' commercial collectors, which are handling WEEE from scrap dealers, retailers, municipalities or other.

Producers cannot control these commercial collectors. Producers do not have enforcement powers to force WEEE or evidence of WEEE collection and recycling to be given to producer schemes. Member States, on the other hand, are the only ones in control of the key instruments to require data on all WEEE flows to be reported to Member States.

A mandatory give back of WEEE from collection sites to producers (Art 5.2b of Council first reading position) is not a substitute for collecting data on all WEEE flows. If a mandatory giveback is not properly enforced, significant volumes of WEEE will continue to be passed to commercial collectors by collection sites, retailers, business end users or direct from households.

[2] **Witteveen+Bos (2008)** Onderzoek naar complementaire afvalstromen voor e-waste in Nederland, 10 April 2008

Mandatory give back would be ineffective for WEEE collected from the doorstep by other independent collectors. This makes it impossible for producers to secure sufficient WEEE to meet the collection target. The only practical solution is to measure all WEEE reaching proper recycling.

Measuring the collection rate according to only WEEE collected by producers' compliance schemes risks leading to profiteering and to increasing the costs of WEEE compliance with no environmental benefit. Measuring the collection rate according to only WEEE collected by producers will mean that municipalities and B2B end users could sell their WEEE to third party actors who can then sell this onto producers at a later date when they need to comply with the collection target. This would mean that producers could be forced to pay a much higher price for compliance. Profiteering in some markets led to costs arising from the WEEE Directive being inflated by up to 50 per cent.[3]

Member States should ensure that all WEEE flows are measured and included in the collection rate. This includes all WEEE that has been properly treated regardless of whether it was treated by a recycling system managed by producers or whether it was treated by other WEEE actors or recyclers.

Industry recommendation:

- **Industry supports amendment 29 of the European Parliament's first reading position**, which ensures that all WEEE flows are measured and proposes to re-introduce it in second reading.
- Industry is concerned that **article 7.2 of the Council's first reading position**, which proposes to measure the collection rate according to only WEEE collected by producers, will force producers to buy back WEEE from commercial collectors to meet the collection target, which risks leading to profiteering and to an inflation of costs without environmental benefit.
  Consequently, **industry does not support article 7.2 of the Council's first reading position.**
  The existing WEEE Directive (article 12.1) already requires Member States to collect information on WEEE collected through all channels exactly matching with the WEEE generated approach. This provision has been maintained in the Council first reading position as article 16.4 (new). Industry requests to further maintain this provision and to properly enforce this obligation.

6. SHIPMENTS OF USED EEE

Industry recognises that the goal of curtailing, and ultimately stopping illegal transboundary shipments of WEEE under the guise of being used EEE is critically important to all parties concerned. The continuation of this practice can have a serious impact on human health and the environment in the countries of destination. **Industry therefore requests proportionate rules for the shipment of used products that extend beyond the warranty period for B2B equipment.**

[3] Based on the experiences of the UK, the profiteering as a result of the Commission's proposal could cost producers an extra €4.6 billion increasing the total costs of the WEEE Directive to €10.2 billion.

These measures are necessary to ensure that the WEEE Recast does not lead to a reduction in the overall level of repair, which includes remanufacturing and refurbishment operations, and reuse.

The proposed wording of Annex VI, in particular the requirement for full functionality, will prevent repair and refurbishment activities, thus contradicting the spirit of the Directive itself. Ultimately it is Europe's goal to build a recycling economy and maximise our resource efficiency. The shipping of used EEE is a legitimate activity and is crucial to achieving these objectives.

Used complex products, including certain B2B ICT equipment, medical devices and monitoring and control instruments are shipped within and outside the EU for a variety of reasons: for direct reuse, at end of lease, for re-sale or re-use after repair, refurbishment or remanufacturing. Many of these products will therefore be non-functioning or outside of any warranty.

Limiting shipments of used products to those that are fully functional and destined for direct reuse will drastically reduce the Producer's / Repairer's interest in the refurbishing, remanufacturing and re-use of systems, sub-systems, parts or components. Without all necessary derogations, industry anticipates that **this will result in a much lower level of reuse.**

The European Council recognised the requests of producers and repairers of B2B equipment for support of their legitimate activities and provided exclusions (Annex VI.2 points b) and c)) from the requirements of Annex VI.; however the proposed exclusions do not address all necessary aspects of the business models used nor the reality in industry today:

- The prescribed "after-sales service maintenance contracts" do not normally exist for various commercial reasons and/or are not appropriate for many current business practices;
- not all producers have their own repair centres – users therefore send such products to 3rd party repairers;
- some B2B products have lifetimes that exceed those of the company that manufactured them – again necessitating that users can send products to 3rd party repairers;
- leasing is a common practice in the B2B area;
- non-functional devices need to be shipped for root cause (failure) analysis or, as in the case of medical devices, meeting regulatory requirements.

Finally, **charging** the persons responsible for the shipment for the **storage costs** of the used EEE should only be possible **in case of a proven illegal shipment.**

Industry recommendations:

- Industry therefore recommends **amending the Annex VI exclusions** accordingly to allow the already well-established and legitimate activities of re-sale and/or re-use following the repair, refurbishment or remanufacturing of professional equipment and their parts/components that would otherwise unnecessarily become waste.
  The industry believes that a key factor that can allow enforcement bodies to differentiate between a legitimate shipment for repair, including refurbishment and remanufacturing operations, and an illegal shipment is how the product is packaged for transport in order to be protected from damage.
- **Article 23.3 of the Council first reading position should be modified to address illegal shipments.**

7. REGISTRATION AND PRODUCER DEFINITION

Industry strongly supports proposals that there should be **no obligation to have a legal seat in each Member State**, since forcing companies to have a legal entity within the territory of the Member State to fulfill the requirements of the Directive is not compatible with the internal market established in the EC Treaty. For the purpose of strict enforcement in Member States, it is, however, necessary that Member States have a contact within their territory.
We therefore support the European Parliament proposal that producers should have the possibility to authorise a **national legal representative** ("local resident agent") in a Member State to fulfill his obligations. The Council also supports this approach, however, only for distance sellers, which is too limited.
The possibility to authorise a national legal representative is therefore needed regardless of whether the producer is defined following a national or a European approach (see also comments on producer definition).

A **harmonised format for registration and reporting**, as proposed by both the EP and Council, will increase transparency and combat free riding. We therefore support these proposals.

Article 16.4 of the Commission proposal would have erroneously mixed registration and take back obligations. We welcome the proposal of the Council to delete this provision.

We recall that while the following **payments** arise from the WEEE Directive, that none of these payments is accumulating in the national registers:

- Recycling fee (paid to compliance schemes, but not national registers)
- Financial guarantee (not paid to national registers)
- Registration fee (invoiced indeed by national registers, but only in some Member States and they are immediately used to cover internal administrative costs depending on the national transposition following the subsidiarity principle).

Regarding the recycling fee, producers should indeed only pay once for the end of life treatment of their WEEE. However, instead of introducing complex (and in our view doubtful besides unnecessary) reimbursement scheme, we suggest balancing out such costs INSIDE the compliance scheme(s) to which the producer has adhered.
In addition to that, it is not necessary, and - against the background of current legal framework of Member States - also not possible, to establish a pan-European reimbursement scheme.
Cooperation and exchange of information between the different national registers and enforcement authorities should nevertheless be maximised.

Industry recommendations:

- Industry supports **amendment 59 of the EP first reading position**. It should be reintroduced in second reading.
- Industry recommends supporting **article 16.3 and annexes X.A and X.B of the Council's first reading positio**n. These take up the EP's first reading amendment 60, which we equally support.
- Industry supports the **deletion of article 16.4** of the Commission proposal, which should be maintained in the further proceedings.
- Industry proposes to strengthen Member States' cooperation to help a better harmonised and more consistent approach of national registration and reporting procedures by **introducing an obligatory cooperation mechanism for national registers** on the basis of the existing European WEEE Registers Network (EWRN).

The **definition of "producer"** in the Directive currently in force leads to ambiguity. We therefore support to clarify the producer definition during the recast procedure and feel that further changes are needed to ensure an acceptable level of enforceability. The legal responsibility is attached to it.

The WEEE Directive is structured on a producer responsibility approach bearing a number of obligations that can be fulfilled only by a producer identified at European level, and which should be harmonised at EU level. It also includes a number of obligations that can only be fulfilled at national level (i.e.: WEEE take back obligations). The producer has (European) obligations that it has to fulfil directly and other (National) ones that it can fulfil directly or through a third party, such as a "local resident agent" as proposed by the European Parliament in amendment 59 and by the Council for distance sellers in the new Article 17.

Whatever definition of producer is included in article 3, whether it be a European or a national definition, law makers should ensure that the provisions maintain an internal coherence by recognising that some obligations may be localised, others cannot be. The two layers should be clearly identified in order to improve legal enforceability:

- **Obligations relating to the product before it becomes waste that can only be fulfilled by a producer identified at European level:**
  Such obligations should be fully harmonised at EU level.
  The legal provisions involved are:
  - Article 4 – provisions for Product Design
  - Article 14 - mark with the WEEE symbol shown in Annex IV + provide additional information
  - Article 15 – provide reuse and treatment information

- **Obligations that are not characteristics of products but represent obligations which can only be fulfilled at national level in each Member State where EEEE is sold and eventually becomes WEEE:**
  There are specific obligations arising from the WEEE Directive, namely that registration as well as financing of collection and recovery are not characteristics of products (e.g. composition, ingredients, environmental impact), but represent additional obligations which have to be fulfilled at national level exclusively (i.e.: in the absence of a harmonised European waste internal market and for the purpose of carrying out effective market surveillance and enforcement activities).
  The legal provisions involved are:
  - Article 5 – to setup take back systems
  - Article 7 – provide for the collection
  - Article 8 – provide for the treatment of WEEE
  - Article 11 –provide for the recovery of collected WEEE
  - Article 12 –provide for the financing of treatment, recovery and disposal of WEEE
  - Article 13 –financing of WEEE other than from private households
  - Article 16 –requires that a register of producers shall be drawn up by Member States

Industry recommendations:

Regarding the definition of "producer" in Article 3j, industry sees the following **two options for the way forward to secure a maximum level of harmonisation in the Directive without compromising effective enforcement in Member States:**

<u>OPTION A</u>: WEEE in an EU context

1. Producer defined at EU level
2. Possibility to use legal representative ("local resident agent") for national obligations
3. The Distributor making equipment available for the first time on a national territory from another Member State inside the Community (intra-community trade) either concludes an agreement with the producer or provides the registration and the financing of the management of WEEE arising from this equipment himself".

The European producer definition provided in Art. 3j of the Commission proposal is taken as a basis and amended by the possibility for the producer to appoint the national legal representative for those obligations that occur at national level.
Obligations that could be fulfilled by the legal representative at national level are those resulting from Articles 5, 7, 8, 11, 12, 13 and 16.

<u>OPTION B</u>: WEEE in a national context

1. Producer defined at national level as the person who makes the EEE available for the first time on the national market of a Member State.
2. Identify the provisions establishing European obligations
3. Possibility to use legal representative ("local resident agent") to avoid necessity of a legal seat in each Member State and to be able to address distance selling

The Directive should clearly state that the obligations arising from articles 4, 14 and 15 are obligations arising at EU level and should identify the actor bearing that responsibility.

<u>For either Option A or Option B</u>:

The definition of producer should be coherent with the text in Article 16 to:

1. Ensure better harmonisation of national registers.
2. Ensure better traceability along the value chain and cross-border tracking of EEE to make sure obligations are fulfilled.
3. Cooperation agreement among Member States needed for distance selling and final enforcement.

There also needs to be clarification:
Irrespective of which option is taken there needs to be a first point of amendment made in art. 3j that "*Any distributor who sells electrical and electronic equipment from a non-registered producer or legal WEEE representative shall be deemed a producer".*

8. PRODUCT DESIGN

Industry fully supports the promotion of eco design. Whilst the establishment of incentives for eco design is retained in the WEEE Directive, the setting of eco design standards is regulated via the Eco Design Directive.
The WEEE Directive based on article 192 should not conflict with product legislation regulated in the Eco Design Directive, which is based on article 114 and thereby fully harmonised. In particular, the WEEE Directive should not presuppose the findings of the preparatory evaluation process that has to be carried out before setting eco design requirements via implementing measures or conflict with the criteria established by the Eco Design Directive. This would, however, arise from EP amendment 24 that sidelines the criteria and preparatory study process of the Eco Design Directive by requesting the immediate establishment of requirements on resource efficiency or the facilitation of reuse, dismantling or recovery of WEEE.

Industry recommendation:

- **Industry prefers the Council's first reading position on article 4** in comparison to the EP first reading proposal given in amendment 24.

9. TREATMENT STANDARDS

Developing harmonised collection, treatment and recycling standards can contribute to the realisation of the environmental objectives of the Directive while giving industries a level playing field. We therefore welcome such proposals.

However, we feel that such standards should be developed via the three European Standardisation Organisations (CEN, CENELEC and ETSI), as is proposed by the European Parliament, instead of Comitology by the Commission, as is proposed by the Council, for the following reasons:

- Standards written by European Standardisation Organisations represent the state of the art and participation in the highly technical preparatory process of the development of the standard is open to all interested stakeholders, including Member States representatives, industry experts, enforcement authorities, environmental NGOs, etc. The development of delegated acts via Comitology, however, does not foresee a stakeholder consultation mechanism.
- Harmonised standards provide requirements that are the same throughout Europe. In this respect they are equivalent to delegated acts. Hence, the same minimum level of environmental protection would be set irrespective of the measure used. But, EN-standards are regularly revised as experience with using them is gained. Furthermore, the New Legislative Framework provides a mechanism for questioning and correcting standards that are thought to be deficient, something that would also need to be established should the requirements be contained within a delegated act.
- The New Legislative Framework foresees a formal mechanism to object to a harmonised standard to ensure that it is entirely satisfactory.

Industry recommendation:

We recommend re-introducing **amendment 99 of the EP's first reading position**.

10. PREPARATION FOR REUSE

Notwithstanding the social benefits related to the reuse of products (before they become waste), industry has concerns on the EP's proposal to introduce separate preparation for reuse targets.

Reuse[4] occurs before items become waste. 'Reuse' is carried out by the consumer market through passing on products to family and friends, through classified ads, E-Bay and other such mechanisms. In the business to business area, this is mainly happening through direct reuse, repair, refurbishment, upgrade and remanufacturing activities (asset recovery). All this occurs before the end-user discards the product. Such activities cannot be considered as 'preparation for reuse'. They are neither in the scope of the WEEE Directive nor can they be measured and contribute to the targets.

Finally, research shows that it would be very difficult to apply 'preparation for reuse' targets to WEEE as such products will have little or no preparation-for-reuse potential.

The proposal to handover WEEE deposited at collection facilities to designated establishments or undertakings for the purpose of preparing for reuse, misses one important point that should be considered. There should be an obligation for organisations dealing with preparation-for-reuse to return all the material that was not prepared for reuse to the appropriate collection/treatment facilities.

Industry recommendation:

- Industry supports the Council's proposal **for including preparation-for-re-use targets of whole appliances in the recycling targets of article 11**.
- **Industry does not support** the introduction of separate preparation-for-reuse targets, as suggested by **amendments 39, 40, 41 and 43 of the EP's first reading position.**
- We reiterate our **support for amendment 99 of the EP first reading position** that proposes developing standards also for the preparation for reuse.
- Provide access for authorised organisation to collection facilities to pick any waste product for their refurbishment activity. **Any material that cannot be prepared-for-reuse and reused by such organisation needs to be handed back to the same collection point.**

11. DUAL USE PRODUCTS

An accurate definition of "dual use" products is needed to ensure true B2B products are not classified as dual use products. The definition proposed by the European Council is open to interpretation. Potentially every item of EEE could be used in the household and therefore defined as "dual use". There are many products within WEEE that are B2B and will never enter the municipal waste stream. Examples include servers, large scale printers, networking systems, video conference suites and large scale public display equipment.

[4] According to the Waste Framework Directive, "reuse" is about "*operations by which products or components that are not waste are used again for the same purpose for which they were conceived*" ; the European Commission's proposal is addressing "preparation for reuse" in Article 11 (recovery targets).

A definition of dual use equipment must ensure that true B2B products continue to be defined as B2B products. **For some categories however, such as for example lighting equipment, all products should be considered household or dual use.**

A consistent definition is needed to ensure the same definition is applied across the EU. There is a danger that the proposed definition of dual use equipment will lead to non harmonised definitions at Member State level increasing the administrative burden of the Directive. Currently Member States use very different definitions to differentiate between B2B and B2C products based on a variety of criteria. This means that for every register or compliance scheme producers need to verify what the criteria for B2B and B2C are and this leads to a lot of unnecessary administrative work.

Defining B2B equipment as "dual use" equipment and therefore classified as B2C could lead to the double payment of recycling costs and lead to unfair obligations for producers. Similarly it is vital that a clear definition prevent any B2C or "dual use" equipment being defined as B2B when it is likely to end up in the municipal waste stream, because it would lead to either underpayment or no payment at all.

Classifying dual use equipment as B2C without clear criteria defining what is outside the dual use definition or which products are clearly B2B will require Member States to reconsider how businesses and municipalities interact in the disposal of EEE, since they should now be able to deposit dual use products for free at municipal collection sites. Additionally producers should be able to count dual use product take back volumes against their overall take back or in the worst case producers may need a mechanism to reclaim fees for products that they take back themselves.

Industry recommendations:

- Industry proposes that dual use equipment be defined as "*waste from EEE **designed** to be used by both private households and users other than private households*".
- Industry proposes that criteria for determining if a product which could be considered dual use is in fact a B2B product be defined in Frequently Asked Questions.
- **B2C and dual use equipment** should not include electronic equipment for which the producer **plausibly documents** that it is used solely in establishments other than private households or that such equipment is **not usually used in private households**.
- To avoid double payments, producers should be able to deduct from their B2C obligation volumes of dual use products collected through their own B2B collection systems.
- To avoid lack of financing (no payment), producers should not be able to declare B2C products as B2B, which are later on returned through the B2C collection systems.

***ORGALIME**, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 9.7 million people in the EU and in 2010 accounted for some €1,510 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union. For more information, please see www.orgalime.org*

***CECED** represents the household appliance industry in Europe. Its member companies are mainly based in Europe: Arçelik, Ariston Thermo Group, BSH Bosch und Siemens Hausgeräte, Candy Group, Daikin Europe, De'Longhi, Electrolux, Fagor Group, Gorenje, Indesit Company, LG Electronics, Liebherr, Miele, Philips, Groupe SEB and Whirlpool Europe. CECED member associations cover the following countries: Austria, Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey and the UK. For more information, please see www.ceced.eu*

***CECIMO** is the European Association of the Machine Tool Industries. We bring together 15 national Associations of Machine Tool Builders, which represent approximately 1500 industrial enterprises in Europe*, over 80% of which are SMEs. CECIMO covers more than 97% of total Machine Tool production in Europe and more than one third worldwide. It accounts for almost 150,000 employees and a turnover of nearly €17 Billion in 2010. In 2010 about three quarters of the production in CECIMO countries was shipped abroad, more than half of which was exported outside Europe*.*
**Europe = EU + EFTA + Turkey; For more information, please see www.cecimo.be*

***CELMA** is a Federation established for an unlimited period, representing 18 National Manufacturers Associations for Luminaires and Electrotechnical Components for Luminaires. CELMA members Associations are representing some 1000 companies in the Luminaires and Electrotechnical Components for Luminaires industries in 13 European countries. These 1000 producers, which include a majority of small and medium-sized companies, directly employ 107.000 people and generate more than 15 billion Euros annually. For more information, please see www.celma.org*

***COCIR** is the voice of the European Radiological, Electromedical and Healthcare IT Industry. COCIR is a non-profit trade association, founded in 1959 and based in Brussels since 2006. COCIR's members play a driving role in developing the future of healthcare in Europe and worldwide. In February 2007, COCIR opened a Desk in Beijing to strengthen its presence and support for its members in China. For more information, please see www.cocir.org*

***DIGITALEUROPE** is the voice of the European digital economy including information and communication technologies and consumer electronics. DIGITALEUROPE is dedicated to improving the business environment for the European digital technology industry and to promoting our sector's contribution to economic growth and social progress in the European Union. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 global corporations and 37 national trade associations from across Europe. In total, 10,000 companies employing two million citizens and generating €1 trillion in revenues. Our website provides further information on our recent news and activities: http://www.digitaleurope.org*

***ELC** represents the leading eight European lamp manufacturers. These companies account for 95% of total European lamp production, employ more than 50.000 people in Europe, and generate more than 5 billion Euros turnover annually. For more information, please see www.elcfed.org*

***TechAmerica Europe** (formerly AeA Europe) represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. TechAmerica Europe Member companies are active throughout the high-technology spectrum, from software, semiconductors and computers to Internet technology, advanced electronics and telecommunications systems and services. Our parent company, TechAmerica (formerly AeA and ITAA), is the oldest and largest high-tech association in the US. For more information, please see www.techamerica.org/europe*