



Joint industry comments on modulating producers' financial contributions for Waste Electrical and Electronic Equipment

25 July 2019

SECTION 1: KEY PRINCIPLES ON THE MODULATION OF PRODUCERS' FINANCIAL CONTRIBUTIONS FOR WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)

As regards the **general concept of “eco-modulation” of producers' fees**, the undersigning associations of the Electrical and Electronic Equipment (EEE) sector acknowledge policymakers' good intention to reward producers for their efforts in ever more environmentally conscious product design contributing to the achievement of the targets of the Circular Economy.

By the end of the year, the European Commission will publish guidelines on the modulation of financial contributions of producers of products to extended producer responsibility (EPR) schemes to assist Member States in the implementation of the Waste Framework Directive (WFD). The undersigning associations would like to provide policymakers with the following recommendations and **key principles for a workable and successful modulation of producers' fees**.

The undersigning associations highlight that **EPR free-riding** is a serious and growing concern, especially in times of e-commerce. The undersigning associations alert policymakers that modulated fees create an additional layer of complexity in the EPR system. In setting modulated fee schemes, particular attention should continue to be paid to the **implementation of the current system of EPR fees**, which is heavily affected by free-riding and non-compliance all over Europe.

Executive summary of joint industry recommendations:

1. Fees must cover real costs for end-of-life waste management and through modulation provide true incentives for producers.
2. Criteria underpinning the modulation of fees must be harmonised at EU level and coherent with existing EU legislation and related European and international standards. To avoid distortion of the internal market, we ask the European Commission to:
 - Adopt legally binding criteria to ensure the uniform application of the eco modulation of fees throughout Europe (but excluding any precise determination of the level of the fees).

- Take all necessary measures to discourage Member States to put in place modulated fee schemes, which deviate from a harmonised EU framework and from setting up new modulated fee schemes until a harmonised EU framework is in place.
 - Put in place measures to enforce the modulated fee schemes all over Europe given that free-riding in the current EPR system is already heavily distorting the internal market.
3. As the implementation of modulated fees on all WEEE would be extremely challenging, the EU framework and eco-modulation schemes must start simple, i.e. cover only a few easy to understand criteria and only a few types of products or product categories.
 4. Modulated fee criteria should be simple, auditable and enforceable as well as enforced.
 5. Measures must be taken to counter misuse of modulated fees by (online) free-riders.
 6. Existing EPR schemes for WEEE in the Member States and financing obligations of producers must be preserved.
 7. The total sum of fees, i.e. the total set of regular fees as well as bonus and malus fees, must not exceed the necessary costs requirement of WFD Article 8(a).
 8. Modulated fees criteria must be defined in close consultation with the relevant stakeholders, and in particular with producers.
 9. Modulated fees criteria must be sufficiently flexible and updated periodically to reflect technological progress.
 10. There should be sufficient implementation time for producers to adapt their processes and particularly the design of the products.
 11. We strongly recommend the European Commission to conduct a thorough impact assessment of the eco-modulation concept, criteria, environmental impacts, financial consequences, existing modulated fees schemes in Europe.
 12. The “real” end-of-life costs and the “recyclability” of a specific product can only be determined years after the product has been placed on the market.

We specify our recommendations in more detail:

1. **Fees must cover real costs for end-of-life waste management and through modulation provide true incentives for producers.** Recital 22 WFD states that the “*the general minimum requirements (...) should (...) provide incentives for producers, when designing their products, to take better into account durability, recyclability, reusability, reparability and the presence of hazardous substances*”. Modulated fees must provide these incentives to producers in a harmonised way. Producers are the actors in charge of the design and manufacturing of the products and have to fulfill their “extended producer responsibility”.
2. **Criteria underpinning the modulation of fees must be harmonised at EU level and coherent with existing EU legislation** and related European and international standards:
 - The criteria underpinning the modulated fees must be **harmonised at EU level and applied consistently across the EU in order to secure a smooth functioning of the internal market.** A patchwork of different criteria in all the Member States would have no positive impact on products design. On the contrary,

they would create administrative burden and costs for producers, and outweigh potential environmental benefits of modulated fees.

The criteria underpinning the modulated fees must be differentiated for particular waste streams, established at product or product group level, limited to the targets of the Waste Framework Directive¹ - durability, reparability, re-usability, recyclability and presence of hazardous substances- and consistent with existing EU legislation.

- **The criteria must be consistent and aligned with those present in existing harmonised product requirements and obligations set by relevant Union law and related European and international standards** (such as Ecodesign, Energy Labelling, RoHS, REACH and EN 4555x (M/543) Material efficiency aspects for energy-related products in support of the implementation of Directive 2009/125/EC establishing a framework for the setting of Ecodesign requirements for energy-related products. Double legislation must be avoided.
- **The criteria underpinning the modulated fees must be enforceable**, thus must be based on reliable, repeatable, reproducible, cost efficient measurement methods, the basis for which is available in the EN4555x series of standards as developed under the Commission Mandate M/543.
- **Eco-modulated fees should be strictly enforced, to avoid further distortion of the internal market due to free-riding.** Free-riding is a serious and growing concern. Sellers not registered and not undertaking take back, or not paying for end of life management costs, impose an unjustified cost on other producers and retailers, distort the market and make compliant companies less competitive. Since free-riding also risks resulting in underfunded waste streams, it may undermine the sustainability of the EPR scheme. Eco-modulated fees, if not applied by all actors and if not strictly enforced by authorities, will further undermine the EU internal market.

In short, we ask the European Commission to:

- **Adopt legally binding criteria** to ensure the uniform application of the eco modulation of fees throughout Europe (but excluding any precise determination of the level of the fees).
- **Take all necessary measures to discourage Member States** to put in place modulated fee schemes, which deviate from a harmonised EU framework and from setting up new modulated fee schemes until a harmonised EU framework is in place.
- **Put in place measures to enforce the modulated fee schemes** all over Europe, given that free-riding in the current EPR system is already heavily distorting the internal market

3. As the implementation of modulated fees on all WEEE products will be extremely challenging, **the EU framework and eco-modulation schemes must start simple**, i.e. cover only a few easy to understand criteria and only a few types of products or product categories.
4. **Modulated fee criteria should be simple** (easy to understand and to implement), **auditable** by the producer responsibility organisations (PROs) or their equivalent **enforceable** by authorities, **reported** against objective claims through a self-declaration process as well as **enforced**.

¹Article 8a.4.(b) WFD states that “the fees are modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and their recyclability and the presence of hazardous substances...”

Enforcers and auditors must be capable of easily verifying whether a product meets the criteria or not. The criteria should be designed in such a way that compliance with EPEAT, ecolabels or comparable efforts can be used for generating eco-modulation advantages.

- 5. Measures must be taken to counter misuse of modulated fees by (online) free-riders.** Producers have to comply with EPR modulated fees criteria and EPR schemes and national authorities in all Member States should rigorously check for compliance. As free-riding on EPR fees among distance sellers, online platforms and multi-seller platforms is seriously distorting a level playing field, the legal framework needs to clearly allocate to these actors greater obligations compared to today.
- 6. Existing EPR schemes for WEEE in the Member States and financing obligations of producers must be preserved:**
 - Member States EPR schemes for WEEE are based on the principle of subsidiarity and reflect local preferences. The implementation of harmonised criteria for modulated fees must not adversely affect well-functioning existing Member States WEEE financial frameworks, such as the distinction between fees for household and non-household EEE.
 - Funding to national EPR schemes for WEEE (in most cases PROs or Producer Compliance Schemes) should remain net-neutral to avoid surplus funds. Higher fees (malus) should be offset by lower fees (bonuses).
 - The amount of bonus / malus adjustment of the modulated fees (bandwidth) should be decided at national level.
 - We strongly object to base modulation on the purchase price of the device. Such an approach would effectively lead to an additional, disproportionate tax-like burden on high-quality, durable products.
- 7. The total sum of fees, i.e. the total set of regular fees as well as bonus and malus fees, must not exceed the necessary costs requirement of Article 8 WFD.** In addition, the financial contributions paid by producers defined by Articles 12 and 13 of WEEE Directive should continue to fund collection related activities and the real end-of-life management costs only²; producer financial contributions cannot exceed the costs that are necessary to provide waste management services in a cost-efficient way in accordance with paragraph 4(c) of Article 8(a) WFD.
- 8. Modulated fees criteria must be defined in close consultation with the relevant stakeholders and in particular with producers.** The determination of modulated fees criteria must be based on a transparent process.
- 9. Modulated fees criteria must be sufficiently flexible and updated periodically** to reflect technological progress as the technological development of EEE and its end-of-life treatment is changing at a fast pace.
- 10. There should be sufficient implementation time for producers** to adapt their processes and particularly the design of the products. The transition time should tie in the processes and product design phases for the given product categories. There should be a clear indication as to how to apply the criteria and as of when. The modulation of fees shall only apply to new products and new models that will be placed on the market as producers can only influence the design aspects at very early stages of product development. To prevent market distortions, by no means should the modulation of fees be applied retrospectively to products that have already been placed on the market.

² For the avoidance of doubt, these costs include PRO overheads and communication costs.

11. We strongly recommend to the European Commission to conduct a thorough impact assessment of the eco-modulation concept, criteria, environmental impacts, financial consequences, existing modulated fees schemes in Europe, including but not limited to an evaluation of French, Italian, and other modulated fees schemes for the products covered. Modulated fees criteria must be based on solid data. The impact assessment should provide evidence that eco-modulated fees will have a positive impact on the design of a product.

12. The “real” end-of-life costs and the “recyclability” of a specific product can only be determined years after the product has been placed on the market, depending on real-life recycling technology at that specific point in time. However, the assessment of the modulated fees criteria will have to be carried out before the product is placed on the market and years before it becomes waste.

Last but not least, we remind of the following **recommendations and conclusions of the [WEEE compliance exercise study of 2018](#)**:

*“The European Commission when preparing guidelines on modulation of fees should take into consideration information and experience from Member States already implementing modulated fees. The Commission should also consider adopting implementing acts in order to lay down criteria for the modulation of fees at European level. To this end, it should identify **conditions of success and points of attention** from Member States implementing modulated fees and notably looking at the products for which the modulation should be set as a priority and is feasible, bearing in mind that **modulation should provide a sufficient incentive to influence design of the products to improve product reuse and recyclability** and also looking how to ensure that **criteria are clear** and based on lifecycle approach, easily **provable and feasible** also in terms of their administration”.*

SECTION 2: RESPONSES TO SPECIFIC QUESTIONS RAISED BY THE STUDY CONTRACTOR EUNOMIA

The background paper that Eunomia shared with delegates at the workshop hosted by the European Commission on 13 March 2019, raises six questions, which we would like to comment on as follows:

Response to question 1: what are the most appropriate criteria for modulation?

Criteria underpinning the modulation of fees must be based on harmonised criteria determined at EU-level and applied consistently across the EU to secure a smooth functioning of the internal market.

The criteria must be consistent and aligned with existing harmonised product requirements and obligations set by relevant Union law and related European and international standards (such as for example Ecodesign, Energy Labelling, RoHS, REACH and EN 4555x (M/543) Material efficiency aspects for energy-related products in support of the implementation of Directive 2009/125/EC establishing a framework for the setting of Ecodesign requirements for energy-related products. Double legislation must be avoided.

The criteria underpinning modulated fees must be differentiated for particular waste streams and be established at product or product-group level and be limited to the targets of the Waste Framework Directive.

To ascertain the appropriateness of criteria, a thorough impact assessment of the existing schemes in Europe needs to be undertaken, and in particular the already existing WEEE criteria in France³. That study will require the involvement of all producers on the market. Criteria that are already regulated at EU level (for example concerning the restriction of the use of certain substances under RoHS or resource efficiency requirements under Ecodesign) are easier to implement than other criteria not yet regulated.

Response to question 2: who should be responsible for establishing the criteria?

The European Commission must take the lead in defining and harmonising the modulated fees criteria at EU level.

All affected stakeholders and especially producers who are and remain responsible for their various EPR obligations (collection systems, financing, etc) should be involved in the discussions leading to the establishment of the scheme. In particular, the public authorities must be convinced of the importance of the scheme, show leadership in managing the consultation and the construction and enforcement of the scheme.

Response to question 3: what should the process be for revising criteria?

Modulated fees criteria must be sufficiently flexible and updated periodically to accommodate technological progress of EEE. The technical development of EEE and its end-of-life treatment is changing at a fast pace.

There should be sufficient implementation time for producers to adapt their processes and particularly the design of the products. There should be a clear indication of how the criteria apply and as of when.

In most cases in France, the introduction of new criteria and their revisions are timed on the approval periods. When new criteria are introduced at the beginning of a new approval, an evaluation is done after two years to see if an adjustment is necessary during the approval period. As a matter of fact, if PRO realise that a criterion is too easy to obtain and that a lot of producers can benefit from it, it is urgent to adjust the criteria, otherwise there is a risk of a financial imbalance. If no important imbalance is noticed, the criteria will not be revised until the end of the approval period. It is also important to have a certain stability. A revision will occur during an approval period only if necessary.

Response to question 4: how can cost coverage be ensured where fees are modulated?

Primarily the bonus / malus fee should reflect real end-of-life costs for waste management, to ensure appropriate cost covering.

While the EU will define – in collaboration with concerned stakeholders – the criteria for the modulation of fees, the EU cannot interfere in setting the level of the contributions, which is the prerogative of PROs. The definition of bandwidth of eco-modulated fees remains the prerogative of Member States after consultation of relevant stakeholders.

Bonuses should reward only best-in-class products, while maluses must compensate for the bonuses, to avoid financial or cashflow imbalances. In other words, as the bonuses and maluses create changes in the cashflow of a PRO, the modulation schemes in the Member States must allow for fine-tuning adjustments to address financial imbalances that may arise from an excess number of bonuses (or, conversely, too few maluses), and, therefore, to mitigate the possible impact on the financial viability of a PRO.

In financial terms, bonuses must roughly offset maluses. There should be a transition period that allows for PROs financial adjustments per criteria (or few criteria) introduced.

³ *In a first phase, 2010-2015, eco-modulation was not yet in French law, just in accreditation requirements for household WEEE, as an experiment. Eco-modulation criteria were set for five categories of equipment: refrigerators, vacuum cleaners, mobile phones, laptops, television screens and lamps. In the second phase, since 2015, eco-modulation is embedded in French law for all products covered by EPR requirements, and the scope is extended with eighteen categories, i.e. all large household appliances, kettles, computers, printers, electrical tools, game consoles...*

The financial management of the modulation will require a multi-annual budgetary planning to ensure stability of the PROs financial systems.

Fees must cover real costs for end-of-life waste management and through modulation provide true incentives for producers.

The PRO must be very vigilant and report to the authorities whether important imbalances are discernible based on the producers' first placed on market declarations.

Response to question 5: how can modulation best work in a situation where there are competing PROs?

A harmonised framework of relevant criteria and products as highlighted above represents in our view the best basis for fair competition.

Response to question 6: what examples can you draw upon to support your views on this topic?

To our knowledge, France and Italy⁴ are today the only EU Member States where modulated fees apply to WEEE. The modulation of fees covers only B2C products and B2B are excluded. However, it seems that in practice, the modulation is not yet fully implemented in Italy. In addition, Denmark has established a [voluntary agreement on WEEE](#) in 2015 to set up a project about differentiated payment.

We thank the Commission and Eunomia for taking these comments into account.

The undersigning associations remain willing and stand ready to provide the relevant further expert input to support the Commission in the development of the envisaged guidelines on EPR modulation of fees by the end of this year.

⁴DM 10 giugno 2016 n. 140

APPLiA - Home Appliance Europe represents home appliance manufacturers from across Europe. By promoting innovative, sustainable policies and solutions for EU homes, APPLiA has helped build the sector into an economic powerhouse, with an annual turnover of EUR 44 billion, investing over EUR 1.4 billion in R&D activities and creating nearly 1 million jobs. For more information, please see [APPLiA's website](#).

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. Our Membership includes 40 national trade associations from across Europe as well as 67 corporations – global leaders in their field of activity. In total, we represent over 35,000 businesses who operate and invest in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract and sustain the world's best digital talents and technology companies. For more information, please see [DIGITALEUROPE's website](#).

EucoLight is the voice of European WEEE compliance schemes specialised in managing the collection and recycling of WEEE lighting; working to make the circular economy a reality for lighting products. On behalf of its 20 members, EucoLight engages with everything related to the WEEE Directive, legislations and standards affecting the collection and recycling of WEEE lighting. EucoLight members collect and recycle, in aggregate, 79 % of the lamps waste collected in the 19 countries in which they operate. Founded mid-2015, EucoLight has quickly embarked into constructive dialogue with relevant stakeholders to provide expertise in the field of management and treatment of WEEE lighting and to promote the positive role of Extended Producer Responsibility schemes on the environment and society. For more information, please see [EucoLight's website](#).

LightingEurope is the voice of the lighting industry, based in Brussels and representing 33 companies and national associations. Together these members account for over 1,000 European companies, a majority of which are small or medium-sized. They represent a total European workforce of over 100,000 people and an annual turnover exceeding 20 billion euro. LightingEurope is committed to promoting efficient lighting that benefits human comfort, safety and well-being, and the environment. LightingEurope advocates a positive business and regulatory environment to foster fair competition and growth for the European lighting industry. More information is available at [LightingEurope's website](#).

Orgalim, Europe's Technology Industries, speaks for 47 trade federations representing the mechanical, electrical, electronic, metalworking & metal technologies industries of 23 European countries. The industry employs nearly 11 million people in the EU and in 2017 accounted for some €2000 billion of output. The industry represents over a quarter of the output of manufactured products and over a third of the manufactured exports of the European Union. More information is available at [Orgalim's website](#).

The WEEE Forum, set up in 2002, is the world's largest multi-national centre of competence as regards operational know-how concerning the management of waste electrical and electronic equipment (WEEE). It is a Brussels-based, international not-for-profit association speaking for 36 not-for-profit electrical and electronic equipment waste producer compliance schemes – alternatively referred to as 'producer responsibility organisations' (PRO). The 36 PROs are based in Europe, Australasia and North America: Australia, Austria, Belgium, Canada, Czechia, Cyprus, Denmark, Estonia, Italy, Greece, France, Iceland, Ireland, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. It is the biggest organisation of its kind in the world. In 2017, its member organisations reported collection and proper de-pollution and recycling of 2,100,000 tonnes of WEEE. Members in 2019: ANAKYKΛΩΣΗ ΣΥΣΚΕΥΩΝ, ASEKOL, Australia New Zealand Recycling Platform, Ecodom, Ecologic, Eco-systèmes, Ecotic, ECOTIC, Ecotrel, EES-Ringlus, EGIO, Electrão, Electrocyclosis Cyprus, ElektroEko, Elektrowin, El-Kretsen, elretur, Environ, EPRA, Fotokiklosi, Norsirk, Recipo, Recupel, Remedia, RENAS, Repic, RoRec, SENS e-Recycling, SWICO, UFH, Úrvinnslusjóður, Wecycle, WEEE Ireland, WEEE Malta, WEEE Recycle and Zeos. More information is available at the [WEEE Forum's website](#).