Position paper for the WEEE - Stakeholder Consultation 2023 Version October 2023

Summary:
Overall, the areas of WEEE disposal for which manufacturers are responsible are working in the individual EU countries. Manufacturers are fulfilling their obligations. WEEE is reliably collected, recycled and services such as insolvency-proof guarantees and awareness campaigns are financed.
The framework conditions in the member states vary. The WEEE amendment should therefore only be adjusted moderately and attention should be paid to framework conditions whose enforcement is ensured. For certain requirements, we are in favor of further harmonization. Other aspects, on the other hand, which depend heavily on local actors and collection structures, should continue to be specified and implemented by regulations in the member states.
In the course of the upcoming revision of the WEEE Directive, there is often talk of "EU harmonization", also in view of the battery regulation that has just been passed and the harmonizations associated with it. However, we believe it is absolutely necessary to consider WEEE separately and to define exactly what is meant by EU harmonization. The quantities of old appliances are currently around five times as large as the quantities of batteries. The product variety and collection channels are significantly more differentiated in the case of electrical equipment. The players and their roles at the national level differ accordingly.

For us, the following points are worth to consider for a revision of the WEEE Directive:

1) EU harmonization with a sense of proportion
2) Revise method of calculating collection rate
3) Improve monitoring of WEEE flows
4) Enforcement
5) Recycle WEEE according to uniform standards
6) Consider specifics of b2b products
7) Interfaces of product vs. waste legislation
8) Digitalisation of information

1) EU harmonization with a sense of proportion

On the one hand, the future WEEE Directive should take up the wish of numerous economic actors to simplify the registration processes. On the other hand, it must be ensured that all actors meet their obligations and that this is verifiable and enforceable.

We propose:

We propose a broad harmonization of the sub-categories.
The number of sub-categories (types of equipment) used in the individual member states and by PROs diverges from 10 to well over 50. Sub-categories are understood to be the sub-categories created below the 6 WEEE2 categories. These serve to communicate the quantities / numbers of units placed on the market (registers / PROs) and are used by PROs at the same time for billing (WEEE fee, charge).

We propose harmonization so that the contents of Implementing Regulation 2019/290 apply equally to registration and notifications via PROs (Producer Responsibility Organization)
In the area of the format of registration and notifications, the European Implementing Regulation 2019/290 has already harmonized to a large extent, insofar as the registration and notifications are made to the national registries. In many Member States, manufacturers provide their registrations and notifications exclusively or at

least also towards a PRO. As the legal basis for the Implementing Regulation 2019/290 in Article 16 (4) WEEE2 only regulates the format for registrations and notifications towards registries, the format for registrations and notifications towards PROs could not be harmonized. PROs use different reporting keys (according to their sub-categories, see also next point), which can be different even in one country for the same product. This divergence between Member States, depending on which PRO one belongs to, creates significant and, by cause, unnecessary additional burdens for manufacturers because they have to use different reporting keys in each Member State.

The following national specifics should be considered and should continue to be implementable:

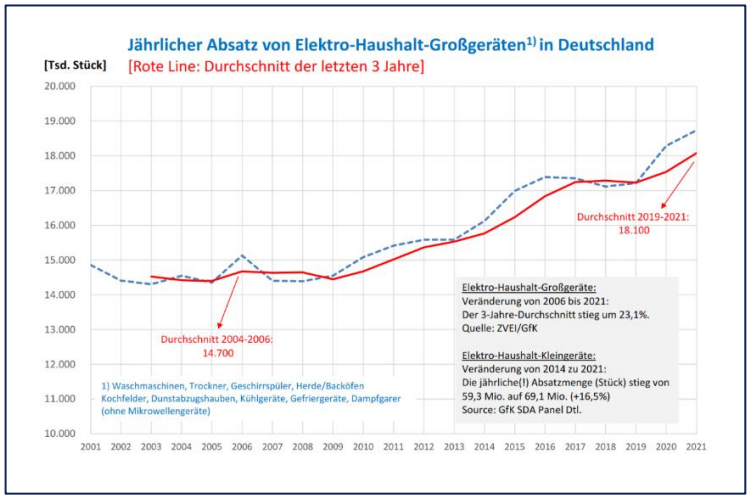
Historical structures: Waste electrical and electronic equipment (WEEE) was already collected and recycled in many EU countries well before WEEE1. Building on national conditions and experience, the WEEE organization then continued to take shape and manifest itself nationally as part of the implementation of the first directive. As a result, the structures established today are known, practiced and proven by citizens and obligated parties. Against this background of national diversity, a possible EU-wide uniform implementation would have no recognizable benefit and would foreseeably result in a serious additional effort due to adaptation measures.

Collection and treatment: In Germany, the public waste management authorities have established themselves as the central point of contact for citizens to hand in their WEEE. The contact points are well known and accepted. The organization of the collection via the municipalities also makes it possible to link with other municipal services (on-site collections, pollutant mobiles), etc. Furthermore, the collection coordination of the German stiftung ear largely prevents cherry-picking at lucrative WEEE collection points of the local authorities. Furthermore, the implementation of WEEE2, especially in Germany, offers maximum flexibility for all stakeholders on how to fulfill their obligations in the best possible way, according to their needs and possibilities (e.g. by means of collection coordination, and/or own take-back, trade collection, opting, take-back of certified primary treatment facilities). Today, manufacturers can, for example, deposit several disposers in the ear system with regional reference to fulfill their WEEE collection obligation. They can report self-collected WEEE quantities, as required, as trade collection or self-return (only the latter reduces their collection obligation in the coordination of collection). Today's large number of individual contracts between product managers and disposal service providers is an expression of free competition. In 2003/2004, the Bundeskartellamt (Federal Cartel Office) also spoke out in favor of genuine competition in the area of the German ElektroG law and expressly welcomed and did not object to today's arrangement of collection coordination and own take-back, which are an expression of individual producer responsibility.

2) Revise method of calculating collection rate

The collection rate of 65% is not achieved in most EU Member States. However, in our view, the determination of the collection rate is based on assumptions that do not correctly reflect the realities and developments in the market. We would like to point out at least three aspects:

- 3-year rule: Collection quantities are related to the average of the quantities placed on the market in the last three years. However, the actual collection depends on the quantities placed on the market 10 or 15 years ago. In growing markets and for equipment with a lifetime of more than three years, the calculated 3-year average quantity can be significantly higher than the quantities actually placed on the market 10 or 15 years



ago. Accordingly, the calculated quota results in a value that is too low. This effect is known in the case of photovoltaic modules and is taken up in publications of the German Federal Environment Agency, for example[1]. However, the effect also occurs with other product groups. The graph illustrates the development for household electrical appliances:

- Legal requirements and voluntary measures for the circular economy (repair, minimum requirements for durability, second use, etc.) are likely to further extend product life; accordingly, this will also have a dampening effect on quota attainment.
- WEEE goes into undefined channels. Collections that do not comply with the law play a major role here (private sector collections, robbery of municipal collections, etc.). As long as WEEE goes through undefined channels, either due to ignorance on the part of citizens or due to insufficient enforcement, it is not available for proper take-back and recovery and is not included in the collection quota.

Our proposal:
It is crucial that the role of collection targets is reconsidered and a more appropriate calculation method is developed that allows for better harmonisation of reporting and collection at European level and provides a more realistic link between new EEE put on the market and actual WEEE collected. The targets should take into account the average or expected lifetime of each product category as well as other factors influencing collection, such as trends and market developments, consumer behaviour and the value of secondary raw materials. Alternatively, a collection target in kg/inhabitant could be used, as this is easier to understand and communicate to consumers. Different markets in the Member States could be taken into account by setting different collection targets.

3) Improve monitoring of WEEE flows

Many "official" and "unofficial" actors deal with WEEE, from scrap dealers to retailers, municipalities, waste management companies and recyclers. While producers are required to report the WEEE they collect and treat, other actors dealing with WEEE can easily circumvent these reporting requirements, even if the WEEE they handle is properly collected and treated. The channels through which WEEE is collected are very diverse and it is difficult to determine how much WEEE is actually generated. This means that some of the resources from WEEE are not documented, i.e. it is not known whether they are actually returned to the material cycle as secondary raw materials.

Our Proposal:
All treated WEEE that meets treatment quality standards should be reported and registered as recycled so that these quantities are included in the overall collection and recycling results in a given country. In many countries, a clearing house has been established as an impartial body that monitors, coordinates and financially accounts for the allocation of WEEE collection for each registered actor - this always includes producers, depending on the country, but also municipalities, retailers, recyclers, other waste organisations. The clearing house can also report to the authorities. The concept of the national clearing house should also apply to future WEEE legislation, which would legally oblige all actors to fulfil the obligations set out in the legislation. The following elements should apply to such multi-stakeholder coordinating bodies involving all WEEE actors:

- Register for all actors
- Monitoring and reporting on WEEE flows
- Support for enforcement actions
- Reporting of collection rates to the authorities
- Ensuring transparency of data - at aggregated level
- Surveillance by the competent authorities

4) Enforcement

Market surveillance and free-rider tracking can be carried out efficiently and effectively, especially at a national level, although the establishment of the European WEEE Enforcement Network (EWEN) is seen as positive. A European super-authority for a European registration, on the other hand, would no longer be able to oversee or know the national market. In addition, Germany also has a special position compared to other national implementations, because in Germany a distribution ban applies to manufacturers who are not or not properly

[1] https://www.umweltbundesamt.de/publikationen/analyse-datenerhebungen-elektrog-ustatg-2018

registered. This can be enforced efficiently and quickly within the framework of competition law. In other Member States, violations of the registration and system participation obligations are punished less efficiently and effectively. Against this background, transferring responsibility for collection quotas to PROs and producers is out of the question. If authorities endowed with sovereign tasks cannot fully and adequately ensure enforcement, this is all the more impossible for system operators. Such a transfer of responsibility would be pure symbolism.

5) Recycle WEEE according to uniform standards

The EN 50625 series of standards is established and has proven itself. Each manufacturer has the possibility to specify the implementation of the standard in their contracts with PROs or recyclers, therefore a full legal implementation is not necessary. Since recycling facilities do not operate in batches, compliance with the standard is ensured even if not all manufacturers should require it.
Since all stakeholders are heard during standard development and adaptation to technical progress is possible more quickly than within the framework of legislative procedures, preference should be given to regulating recycling specifications and qualities via standardization. Irrespective of this, at least the EN 50625-2-3 standard for refrigerators and freezers should be fundamentally reviewed. Since the current standard refers to the existing WEEE, a study must be commissioned by the Commission before the publication of the new WEEE, which is dedicated to the ecologically optimized processing of old refrigerators and freezers against the current technical and regulatory background. The background to this request is that the previous standard was based on recovering and destroying pollutants such as CFCs. This was also unquestionable due to the environmental impact of CFCs. Today, mainly hydrocarbons and hydrofluoroolefins are used,

- whose environmental impacts are not comparable with those of CFCs,
- some of which can only be recovered from the treatment fractions with greater energy expenditure.

For example, to meet the limit for blowing agents in foam, 0.2 wt.% applies to both HCs and CFCs. The foam and the recovered CFCs are then incinerated. HCs are not as volatile as CFCs and reaching the 0.2 wt.% limit requires considerably more energy. Whether this can be justified on environmental grounds if both fractions - foam and HCs - are subsequently incinerated is obviously questionable. It must also be taken into account that the foam may be recycled, in which case the life cycle assessment would be different again. All this should be covered in a study commissioned by the Commission.

6) Consider specifics of b2b products

B2b products have the following specific characteristics:

- Capital goods have lifetimes of 10 years and more. In building and drive technology, lifetimes of over 20 years are the rule. Long lifetimes are achieved in particular through repair, maintenance and overhaul services, which are usually contractually regulated by industrial or commercial customers. **Consequence:** the lifetimes used in the WEEE Directive to calculate quotas do not correspond to the values achieved in practice.
- In the field of automation (e.g. electric drives), 60 to 70% of the electric/electronic components manufactured in Germany are not placed on the German market as such, but go as components e.g. to the export-strong mechanical engineering industry (export quota up to 80% depending on the sub-sector). If a machine with components registered in Germany is exported, these are not "de-registered" as export quantities due to the design of national laws, such as the German ElektroG. **Consequence:** Export quantities do not accrue as collected quantities in Germany. This overestimates the quantities in circulation in Germany.
- Second and third use or the reuse of partial components are common. Over such periods of time, there are usually significant changes in the markets for new equipment. In some cases, there are several generations of technology between the products put on the market today and the quantities that are returned. A comparison of the quantities put on the market today with the quantities coming back today is therefore hardly possible. **Consequence:** partial components are reused, but the reuse of entire machines is unusual.
- Usually, b2b customers, as commercial and industrial enterprises, have recycling companies as their own contractual partners, which collect b2b WEEE or components directly from their customers and send them for recycling. The b2b manufacturer is not (no longer) involved. b2b customers who want to hand in equipment at the actual end of its life (sometimes after several decades) usually do not go to the trouble of identifying and contacting the respective manufacturer, but choose the route via a recycling company. In addition, there are more and more actors that pay financial compensation to b2b

customers for handing in old equipment in order to obtain the materials - these quantities may not be reported to the system. **Consequence:** The manufacturer has no knowledge of and no access to b2b waste equipment. A large part of the generated quantity is not reported as WEEE, but is treated as sorted scrap metal.

Our proposals:

- Adjustment of the calculation methods of the collection rates for b2b and b2c to real market conditions and lifetimes.
- Consistency between WEEE and legislation such as ESPR (ESPR requires carbon footprint determined based on an LCA using PCR/PSR. The PCR/PSR for e.g. frequency converters gives 10 years, the one for motors 20 years as typical use phase. The current Ecodesign implementation Measure for fans discusses a minimum time for spare parts of 7 years) or Cyber Resilience Act (requirement of updates for the expected lifetime).
- Facilitate reporting possibilities for recycling companies; all flows ultimately end up with the same recycling companies. In the course of this, it should be examined whether these recycling companies/recyclers should be allowed to report quantities, unlike today.

7) Interfaces of product vs. waste legislation

Product design requirements do not belong in waste legislation, for example in Article 4 of the WEEE Directive. With the current Ecodesign Directive and the future Ecodesign for Sustainable Products Regulation (ESPR), sustainable regulations exist that regulate product design.

Our proposal:

Deletion of regulations on product design from the WEEE and transfer to the ESPR

The reversal of the burden of proof in Annex VI makes it difficult for manufacturers to adopt and accelerate cross-border approaches to repair/reuse, preparation for reuse and new business models.

Our Proposal:

With regard to cross-border (W)EEE concepts of producers for repair/reuse, preparation for reuse and new business models, there should be appropriate exemptions for original producers regarding the Waste Shipment Regulation and Annex VI of the WEEE Directive. The aim must be not to jeopardise producers' efforts to achieve product longevity and waste prevention in a single EU internal market.

To support Circular Economy activities, a clear and uniform delineation of the terms re-use, preparation for re-use, refurbishment and remanufacturing is required. This enables a clear assignment of responsibilities, especially for manufacturers and other actors along the value chain.

8) Digitalisation of information

The WEEE Directive defines, among other things, the obligation of manufacturers to provide information, but does not prescribe a communication medium for the information of users. In various EU countries, however, the paper obligation is being introduced as part of the implementation into national law. This paper obligation has 3 serious disadvantages:

1. manufacturers must include many millions of paper notices in total with their products. The paper weight adds up to many tons of paper that pollute the environment.
2. the products - e.g. electrical installation devices - are sometimes used for more than 20 years. The disposal notice on paper is usually no longer available at the time the product is disposed of and is therefore ineffective.
3. at the time of disposal - e.g. in 20 years - completely different disposal instructions may apply and the instructions on paper may thus be obsolete.

We propose to include in the WEEE Directive a recommendation to national legislation to waive the paper requirement and allow digital communication. An adequate solution is the Digital Product Passport. This will achieve the following goals:

1. many tons of paper will be saved, thus significantly protecting the environment.

2. the disposal information will still be accessible on the web in 20 years and thus available at the time of disposal.
3. the disposal information can always be kept up to date by the manufacturers on the web.

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date: 04.10.2023