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## Implications of the (new) open scope of Directive 2012/19/EU on meeting the WEEE targets

Consequences of the Open Scope for WEEE producer compliance schemes  
(PROs) and the WEEE sector at large



The WEEE Forum a.i.s.b.l., a global central of competence speaking for thirty-six producer responsibility organisations in Europe, Australasia and North America, acknowledges the different guidelines provided to improve the understanding of the so-called “Open Scope” of Directive 2012/19/EU (hereinafter “the Directive”).

This paper seeks to identify the consequences for the WEEE compliance and management sector of the different interpretations of the new scope.

## Main messages

*The WEEE Forum is of the opinion that:*

- ▶ *When setting up the new scope, decision makers should be mindful of implementation aspects, such as the achievement of the collection and recovery targets set by the WEEE legislation*
- ▶ *Execution of the measures to adapt to the new scope and classification will require appropriate planning and timing for all actors affected*
- ▶ *In order to keep a level playing field in Europe, there should be harmonized criteria to determine the products that fall in the scope of the Directive.*
- ▶ *An assessment of the impact of the inclusion of products belonging to the denominated “grey areas” in the BIO report should be conducted before its inclusion is agreed.*
- ▶ *The assessment should consider how the inclusion of such products will affect the management of WEEE from an environmental, legislative, technical and economic point of view.*
- ▶ *Decisions on new scope and classification should be accompanied by a bespoke communication and enforcement campaign to ensure compliance*

## Context

Article 2 of the WEEE Directive determines that from 15 August 2018, all EEE shall be classified within the categories set out in Annex III (open scope).

The 2013 report<sup>1</sup> commissioned by the European Commission concluded that: “The scope of the new WEEE Directive is not substantially different from the scope of the old WEEE Directive (...)”. The report also mentioned that some products stay in the so called “grey areas” and may be subject to different interpretations by the competent authorities of member states.

In April 2017, the European Commission<sup>2</sup> issued a report based on the aforementioned (BIO) report that stated: “*In conclusion, the (BIO) study confirmed that there are no significant*

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<sup>1</sup> Bio Intelligence Service, 2013, Review of the scope of the Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE). Final report prepared for European Commission-DG Environment

<sup>2</sup> Report from the Commission to the European Parliament and the Council on the review of the scope of Directive 2012/19/EU on waste electrical and electronic equipment and on the re-examination of the deadlines for reaching the collection targets referred to in Article 7(1) of the new WEEE Directive and on the possibility of setting individual collection targets for one or more categories of electrical and electronic equipment in Annex III to the Directive

*changes to the scope of the new WEEE Directive as a result of the change to categories of electrical and electronic equipment.” The EC report concluded that: “Taking into consideration the key findings of the study carried out for a potential review of the scope of the new WEEE Directive, no further changes to it are justified. Changes would also be disruptive at a time when Member States are still in a period of transition, adjusting to the new definitions and scope of the WEEE Directive.”*

Despite the conclusions above, during the past months guidelines and position papers from various organisations have been issued providing their clarifications on the “open scope” approach. Member states are discussing internally how to determine what products should be considered in and out of scope. As a result, a diverse group of potential new EEE is under discussion in member states, and products such as furniture and clothes with electronic components may now become EEE, depending on how strict the interpretation is, which could significantly increase the weight of EEE placed on the market and have wider implications for WEEE management.

These discussions have largely been prompted by the change in wording regarding when an item requires electric currents or electromagnetic fields in order to fulfil its basic function to enabling it to **work properly**. Given the statements made in the 2013 and 2017 reports it is unclear why such significant changes in scope are under discussion.

## **Impact on WEEE collection targets and EEE reporting**

WEEE collection targets are supposed to be calculated in accordance with the requirements of the Directive, which means that collection targets will be based on the amounts of EEE placed on the market or on the quantity of WEEE generated that is estimated in accordance with Implementing Regulation 2017/699 (and the WEEE calculation tool<sup>3</sup>).

First of all, it should be noted that the current version of the WEEE calculation tool available for member states does not consider products entering into scope for the first time. As regards the calculation of the collection target based on previous EEE placed on the market, the lack of data reported for such products in the past years may lead to different approaches in the calculation, which in turn, will create imbalances among Member States. Further development of the WEEE calculation tool for each member state is therefore important for target setting once open scope is implemented.

Secondly, member states that apply a broader interpretation of the scope will certainly have to collect higher volumes of WEEE to reach the targets, whilst collection targets (in tonnes) may be lower in member states with a more conservative approach. We believe that this runs counter to the European Commission’s harmonisation efforts and common rules are desirable.

In addition to this, common rules should apply for the declaration of certain products (if they are considered in scope). It should be noted that such rules for reporting EEE may have an impact on waste management practices. Take, for example, a piece of furniture with an

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<sup>3</sup> [http://ec.europa.eu/environment/waste/weee/data\\_en.htm](http://ec.europa.eu/environment/waste/weee/data_en.htm)

electronic component: Should the whole product be reported as EEE, only the electronic part, or none of it? If just the electronic part was regarded as in scope, then only the electronic part should account for the achievement of the collection target. This however would require the electronic part to be removed from the appliance and weighed separately. Given that most member states do not have a furniture EPR system, this option may not be viable in practice. Requiring the whole appliance to be reported as EEE would have significant consequences, for instance furniture is unlikely to be collected through traditional WEEE routes nor be delivered to WEEE collection and treatment facilities; so how would this be dealt with? The complexity of this issue increases when considering other types of products like clothes with electronic components.

The addition of new products to the scope of the Directive could therefore require changes to collection infrastructure. Currently, available space for collecting WEEE is already challenged in certain areas, including municipalities and retailers. Changes in the collection infrastructure would entail increased complexity in the management of WEEE (extension of networks, reporting, investment etc.). Introduction of the aforementioned changes will need to be carried out gradually and the full process will require a relevant timeframe.

Discussions on new classification and scope have raised questions about weight reporting in different member states; further harmonized guidance on weight reporting would be welcomed, not only for "new, hybrid" products (such as clothes with electrical parts) but also for other items such as electrical accessories and when non-electrical items should be included in the weight of a product. An extended version of the FAQs document from the European Commission providing clarification and an extended product list of examples of appliances in and out of scope would provide a European, harmonized approach for such matters.

When member states have defined the scope frame at national level, the provision of information to affected parties will then be crucial to ensure compliance (consumers or manufacturers are unlikely to regard furniture for instance as EEE). With additional new products in scope, new niches for freeriding will appear, and active enforcement efforts, together with extensive communication, are crucial to ensure compliance of the WEEE legislation in place.

Finally, the responsibility for the financing of the management of historical WEEE is shared by all existing producers through collective financing schemes (to which all producers that exist on the market when the costs occur contribute proportionately). New volumes of historical waste may arise due to new products in scope. Depending on the scope interpretation, volumes of historical waste may be of a relevant magnitude. A proper assessment of the costs associated to these volumes should be carried out and contribute to the discussions implementing the new scope in member states.

- ▶ *WEEE collection targets should be based on a harmonised scope*
- ▶ *Policymakers involved in discussions around implementation of the new scope must be mindful of how the inclusion of new products will affect collection targets and the management of WEEE collected*
- ▶ *Information and enforcement are crucial to ensure EEE producers of new products in scope comply with the new legislative scope and existing EEE producers are not burdened with an unfair share*

- ▶ *The addition of new products to the scope could entail changes to collection infrastructures, whose implementation will require a relevant amount of lead in time and efforts*
- ▶ *Member states using the WEEE calculation tool should adapt the tool to new products in scope.*
- ▶ *Common rules for (weight) reporting specific types of appliances and parts thereof (if considered in scope) should apply.*
- ▶ *An assessment of (new) historical waste should be considered when planning how to apply the new scope legislation*

## **Impact on WEEE recycling and recovery targets**

A broad interpretation of the scope means that products with a material composition that is completely different from typical WEEE, think of shoes with lights, will be considered EEE and WEEE. Furniture, clothing and shoes are already collected by organisations from a different sector (Third Sector) and any material changes affecting these products would disrupt such activities. In addition, these products are unlikely to be accepted at WEEE recycling facilities as they may not be suitable for the WEEE treatment processes currently in place. New treatment processes in the WEEE value chain may be required to facilitate proper treatment of such waste. This would entail the sorting of additional waste types from the WEEE collection streams, the adaptation of existing WEEE treatment processes and/or the addition of other treatment processes. These changes will add complexity to and increase the costs of the WEEE management chain.

Additionally, it should be noted that in many cases, products such as clothes with lights or furniture with electronic components were not manufactured in conformity with the recycling and recovery requirements of the Directive (and applicable to EEE). This would likely affect the average values of the rates currently reached and may hinder the achievement of WEEE recycling and recovery targets in the short term. A significant timeframe was required to achieve the current recycling and recovery rates in member states. Although there is currently no data available to quantify how new products will affect existing rates, it is reasonable to expect that a relevant timeframe will be required for "new EEE manufacturers" and WEEE EPR organisations to adapt to the new situation.

- ▶ *The composition of new products in scope and how it will affect the management of WEEE should be considered in the decision-making process planning implementation of the new scope.*
- ▶ *The effects on the recycling and recovery rates due to the addition of new products should contribute to such process as well.*

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About the WEEE Forum a.i.s.b.l.

The WEEE Forum, set up in 2002, is a Brussels-based European not-for-profit association speaking for thirty-six not-for-profit electrical and electronic equipment waste (WEEE) producer compliance schemes – alternatively referred to as 'producer responsibility organisations' (PRO). The 36 PROs are based in Australia, Austria, Belgium, Canada, Czechia, Cyprus, Denmark, Estonia, Italy, France, Greece, Iceland, Ireland, Lithuania, Luxembourg, Malta, the 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 2018: Amb3E, ΑΝΑΚΥΚΛΩΣΗ ΣΥΣΚΕΥΩΝ, ASEKOL, Australia New Zealand Recycling Platform, Ecodom, Eco-systèmes, Ecotic, ECOTIC, Ecotrel, EES-Ringlus, EGIO, Electrocyclusis Cyprus, Electronic Products Recycling Association, ElektroEko, Elektrowin, El-Kretsen, elretur, Environ, ΦΩΤΟΚΥΚΛΩΣΗΣ, Norsirk, Recipo, Recupel, Remedia, RENAS, Repic, Retela, RoRec, SENS eRecycling, SWICO, UFH, Úrvinnslusjóður, Wecycle, WEEE Ireland, WEEE Malta, WEEE Recycle and Zeos. Contact: [info@weee-forum.org](mailto:info@weee-forum.org). Website: [www.weee-forum.org](http://www.weee-forum.org). See also [15 Years On](#).