



A vision on e-waste policy principles

The WEEE Forum's set of remarks on the European Commission's Proposal for a recast of Directive 2002/96/EC on WEEE

24 April 2009

1. Executive summary

In its Proposal for a recast of Directive 2002/96/EC on WEEE, the European Commission says that “[...] member states shall ensure that producers or third parties acting on their behalf achieve a minimum collection rate of 65%” and that “member states shall ensure that producers provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households deposited at collection facilities set up under Article 5(2). Member states, where appropriate, shall encourage producers to finance all the costs occurring for collection facilities for WEEE from private households”.

The WEEE Forum has made it clear in the past that a collection target fixed in kilogram per inhabitant, as in the original Directive, is inappropriate. Yet there are reasons to believe that the proposed new target, instead expressed in percentage of sales volumes, and imposed on producers, rather than on member states, will fail to address the problems that have arisen with the implementation of the Directive. A failure to lay down a requirement that all e-waste must be handed over to producers, in combination with the proposal to encourage producers to finance the costs incurred for collection facilities for e-waste from private households, will create new unlevel playing fields. There are already several examples of unlevel playing fields in the WEEE area across Europe. The proposed changes will increase costs for producers dramatically and amplify the extent to which producers could be held captive by those that collect waste. The true objective of the Directive will not be achieved and the identified problems of illegal treatment and shipment will not be resolved. Instead, e-waste traders that control the collection of WEEE will be able to dictate terms upon which producers or their compliance schemes may access such WEEE. Rather than making this behaviour spread all over Europe it should be resolved in the member states where it occurs today.

The WEEE Forum’s solution rests on the following *set of key principles*.

- All parties that handle WEEE must be subject to the reporting, registration and treatment requirements of the Directive. If, however, this principle is deemed politically inexpedient, a legal requirement must be introduced that guarantees fair access to waste for all obligated parties.
- Obligated parties must accept to receive all WEEE that is returned to them.
- Municipalities must continue to focus on what they are historically very good at: Collecting all types of waste, including electrical and electronic waste.
- Authorities must actively fight illegal practices.
- An extension of the ban on the export of certain types of WEEE may be considered.

In this paper, the WEEE Forum seeks to contribute, by providing both expert views and facts and figures, to the discussion on the recast of the Directive. The focus of this issue paper is the newly proposed collection targets and the requirement on member states to finance at least the costs of collection from collection facilities and the treatment, disposal and recovery of WEEE, and to encourage producers to take full ownership of the WEEE collection, in particular by financing the collection of WEEE throughout the whole waste chain including from private households.

The Commission's impact assessment explicitly assumes that producers will be able to recover their costs from the consumer. This seems to be a justification for extending producer responsibility, while we believe that this is a flawed assumption. Neither is it guaranteed that the scrap value in WEEE is returned to the producer – probably it is not in most countries.

2. Introduction

The WEEE Forum is the largest association in Europe of WEEE collection and recovery systems that put the principle of producer responsibility into practice every day. Its 40 members collected 1.5 Mt of e-waste in 2008, which represents about half of all reported and officially accounted for e-waste collection in Europe¹. The organisation was set up in April 2002², i.e. at a time when the provisions of the original Directive were being negotiated by Parliament and Council. Several WEEE Forum members have been collecting and recovering e-waste for more than five years, and one for almost 20 years.

The producer responsibility organisations (PRO) that make up the WEEE Forum have not only developed sound experience in the area of e-waste management in operational terms. They have also implemented different ways of financing the operations, and they have launched targeted consumer awareness raising campaigns to improve collection.

That is why the WEEE Forum as a community of PRO has *de facto* become a competence centre. Its mission is to continuously improve, within the existing regulatory and legislative framework, the environmental performance while reducing

¹ The Commission services estimate that only one-third of a total of approximately 9 Mt of WEEE is officially reported.

² WEEE Forum members in 2009: Amb3E, Appliances Recycling, Asekol, Ecoasimelec, Ecodom, Ecofimática, Ecoléc, Ecologic, Ecoped, Eco-RAEE's, ecoR'it, Eco-systèmes, Ecotic, Eco Tic, EES-Ringlus, Electro-Coord, ElektroEko, Elektrowin, El-Kretsen, elretur, el retur, Envidom, ICT Milieu, Lightcycle, Lumicom, NVMP, Recupel, ReMedia, Repic, Retela, RoRec, SENS, Serty, SEWA, SLRS, SWICO, UFH, WEEE Ireland and Zeos. The countries in which they operate: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom. See also <http://www.weee-forum.org>.

costs for the producer community that mandates the systems. Experience gained in one system is shared with all other systems, and ways are sought to address common concerns. The organisation's main goals concern better collection and better treatment.

3. What exactly is the problem?

New collection target – Article 7 of the Commission Proposal says that “[...] member states shall ensure that producers or third parties acting on their behalf achieve a minimum collection rate of 65%”, and that “the collection rate is calculated on the basis of the total weight of WEEE collected [...] in a given year in that member state, expressed as a percentage of the average weight of electrical and electronic equipment placed on the market in the two preceding years in that member state”.

The WEEE Forum believes that this approach is flawed.

- It is *legally incorrect* to make parties responsible for something without providing them the means to fulfil their responsibility. No party should be made responsible for something which is beyond its control – consumers cannot be forced to return end-of-life appliances, except by law.
- It is *inappropriate* that EC law addresses *only one actor* in society, c.q. producers or parties that act on producers' behalf, for meeting the collection target. First of all, producers or the parties that act on their behalf are not in a position to oblige consumers to return end-of-life appliances to the producers. Secondly, they cannot possibly prevent other parties in society – think of scrap merchants and municipalities – from selling electronic waste to make a profit³. In other words, producers have no legal instrument at their disposal to achieve access to e-waste, or to secure that the other actors that may collect e-waste handle it correctly⁴; especially WEEE with a positive material value will remain out of reach for producers.
- Whether or not the proposed percentage itself is appropriate, is debatable and of lesser importance. But recent research performed on the basis of in-house key figures [see annex I and 2007 Key Figures⁵], made it clear that the target of 65 per cent has so far not been achieved by any producer responsibility organisation of the WEEE Forum, except for one or two specific cases in a few

³ In Britain, for example, a number of commercial organisations have significant control over the WEEE that is collected, where it is treated and to which producer or compliance scheme it is transferred, yet, in some cases, they have no obligations under existing legislation.

⁴ There is evidence that shows that in Poland, consumers bring their WEEE to collection points (more than 1,000 of them in the city of Warsaw alone) where it gets into the hands of parties that act on the black market and therefore do not subsequently have it properly treated.

Processors have a strong position in the WEEE business.

⁵ See www.weee-forum.org.

member states where systems have very good access to waste and a long history of WEEE being handed over to the systems, and where the population is generally aware and committed to environmental issues. Therefore, for all intents and purposes, the proposed target is completely *unrealistic* for almost all member states within the existing regulatory framework⁶. There are even reasons to believe that the target will remain out of reach for most member states mainly because of their inability to guarantee access to waste but also on account of cultural, economic and other reasons and because a number of specific conditions are unlikely to be put in place any time soon [see annex II].⁷

- It is also interesting to note that the suggested collection target based on *sales volumes* in the previous two years will have the effect that less e-waste will have to be collected in one particular year as a result of the economic recession, whereas it will take years before the products turn into WEEE.

Financial responsibility for collection from households – The provisions on collection targets should be read together with Article 12, which says: “*Member states shall ensure that producers provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households deposited at collection facilities set up under Article 5(2). Member states, where appropriate, shall encourage producers to finance all the cost occurring for collection facilities for WEEE from private households*”.

The Impact Assessment accompanying the Commission Proposal for a new Directive points out that this measure is meant to “*level the playing field between producers opting for setting up individual schemes for the separate collection of WEEE and producers opting for collective solutions and using municipal collection sites, and so passing to others some of the costs for the separate collection*”. In addition, making producers financially responsible for collection from the doorstep of households in combination with the new collection target is thought to create incentives for producers or parties who act on their behalf, to set up their own collection facilities.

This approach is flawed for several reasons.

- An EC law obliging member states to encourage obligated parties to finance *all* the costs incurred by collection facilities goes beyond what is necessary to achieve the goal of making the Directive more effective. It therefore violates the *proportionality principle*. One could possibly even argue that it violates the *subsidiarity principle*.
- The Proposal incorrectly assumes that market actors have the legal means in all member states to become *owners* of WEEE. In countries where there are

⁶ In all likelihood, some member states will make matters substantially worse by introducing penalties for failure to reach collection targets.

⁷ Setting up an efficient collection infrastructure and raising awareness with the public at large take many years to accomplish and requires huge investments.

several compliance schemes and where there is no right of access to WEEE that is collected in accordance with scheme market shares, this problem is exacerbated⁸.

- It will create an *unlevel playing field* in Europe. Municipalities in poorer member states, where proper waste collection infrastructure is currently non-existent, will be tempted to shift the cost of set-up of hundreds of new facilities across their territories onto obligated parties. In those member states that have already invested in infrastructure, the status quo may prevail.
- The suggested formulation can have the effect that one party can be required to approve of all costs and *sign on the dotted line of a blank invoice*, without it having influence on the management of those costs. Such a situation is not conducive to efficiency, and therefore costs for collection will likely spiral out of control. Article 12 undermines the traditional approach of negotiation among free actors subject to member states rules. This is very similar to a tax, and would therefore have to be approved unanimously, i.e. not through qualified majority voting, in the Council of Ministers.
- *Consumers will end up paying twice*, once through the taxes they already pay to the authorities for waste collection and a second time through higher prices for new products, as producers would have no other choice than to increase their prices to cover their exposure.
- An obligation to pay costs incurred by collection facilities – and given that obligated parties have no say over the management of those services – does in no way guarantee that e-waste will no longer be shipped illegally or sent off for improper treatment⁹. The measure proposed is therefore *not effective*.
- Collection is often, and rightly so, an *exclusive competence of municipalities*. Many municipalities in several member states want to keep it that way and have all sorts of legal and administrative instruments, e.g. permitting policy, at their disposal to discourage private actors from contracting with competing service providers or setting up rival collection facilities or kerbside collection. This is clearly a problem. Requiring someone to pay someone else's invoices without securing realistic alternative ways of compliance violates one important,

⁸ In Britain, it has led some schemes to collect quantities far in excess of their obligations and seek to sell this to other schemes. In a market where 100 per cent of separately collected WEEE must be financed in accordance with market share this means that those schemes that are short of WEEE must buy from others. In the absence of a central allocation authority and price control mechanisms, some parties are held to ransom by the collectors of WEEE. The regulator in Britain has not only failed to provide guaranteed access to waste but also to set up a central allocation authority.

⁹ In quite a few member states, municipal collection facilities are run by private entities that have full control over what happens to the WEEE in terms of treatment, yet they are not subject to specific obligations.

basic legal principle: No party should be responsible for something which is beyond its control.

- If, however, anybody, e.g. electro shops or the regular municipal collection facilities, has the legal right to recover the costs of home collection, more parties will be encouraged to start up such a business and place even more burden on producers and their representative schemes. Yet one would also have to question the environmental benefit to be gained in multiplying the number of collections (vehicle mileage) taking place and duplicate collection points being set up.
- In those cases where competing collection facilities are in principle allowed, they may in some cases prove to be prohibitively costly¹⁰.
- Producers will be compelled to start negotiations with organisations in order to get access to WEEE – a practice which is novel in quite a few member states. They will have little other choice than paying an unnecessarily high price for compliance. In some member states¹¹, negotiations with unreasonable parties¹² already take place; the proposed Directive would aggravate that situation¹³.

In other words, producers and parties that act on their behalf are likely to find themselves in a so-called *captive market*, i.e. a market in which third parties can exact pressure onto those subject to compliance. This is unacceptable.

¹⁰ In Estonia, there are reasons to believe that the operational cost in separate collection facilities would be about 10 times higher than in municipal waste stations.

¹¹ In Britain today, organisations are seeking to extract extraordinary profit from manufacturers' duty to prove they are recycling their share of waste equipment, which has resulted in considerably higher costs. Producers' commitment to meet their obligations is used as an opportunity for others to make huge profits. Reality in Estonia is similar: when the amount of WEEE collected is inferior to the individual collection target, there is a very strong incentive to get hold of every last piece of waste equipment.

¹² Those organisations may be traders, but also waste management companies, retailers, producers or producer responsibility organisations (PRO). In Estonia, certain PROs with a minuscule market share (in terms of sales) have full control over a major share of WEEE collected.

¹³ One could question whether law should encourage such totally unethical business behaviour.

4. Conclusion

The proposal of the Commission to lay down an ambitious collection target and a requirement for producers to pay all the costs incurred by collection facilities, without providing for a legal assurance that producers, or recycling systems acting on their behalf, will have access to waste or the right to contract with alternative service providers or the possibility to set up parallel collection facilities, is a recipe for *complete disaster*. Producers and compliance schemes acting for producers will end up in a *captive market*, i.e. a market controlled by unscrupulous or, at least, unreasonable operators who will start dominating the scene by sitting on the waste they have collected but for which they will charge substantial prices¹⁴. Prices at which producers and their compliance schemes will have to buy WEEE collected by other parties will spiral out of control.

The Commission Proposal to establish a sales-based collection targets for producers, makes little sense unless producers, or the parties that act on their behalf, have full access to waste and all waste is handed over to them.

5. What's the solution?

This problematic situation can only be addressed by laying down a set of principles¹⁵.

- *All parties that handle WEEE must be subject to the reporting, registration and treatment requirements of the Directive, not only the producers, which is currently the case in the present Directive and also mentioned in the Proposal. In other words, scrap merchants, municipalities or brokers can continue to collect and treat WEEE, in which case they would subsequently not be in a position to require producers to take over those quantities or to pay for it. Their clearly defined responsibilities must be equal, or at least equivalent, to those of producers and parties that act on producers' behalf, and compliance with the established treatment requirements and standards is ensured. This means, in practice, that WEEE handled by parties other than producers must be reported and accounted for in the calculation of quantities collected and processed. Collection facilities must be registered and approved.*
- If, however, it is deemed (politically) inexpedient to make all parties that handle WEEE subject to those requirements, and only producers or the parties that act on their behalf are made responsible, a legal requirement must be introduced that says that *all WEEE must be handed over to producers and no-one else*

¹⁴ In Poland, as in quite a few other member states, processors do not only treat waste, but also collect and transport it. There is even evidence that shows that treatment operators illegally trade documents with recyclers and other parties ascertaining non-existent processes.

¹⁵ The set of principles should be seen as indivisible, i.e. one principle should not be disconnected from the other.

may handle WEEE. Fair access to waste must be guaranteed to all obligated parties and member states must enforce it effectively. Producers must also have the ability to appoint their own contractors to collect and treat WEEE. Whoever collects waste must be under contract with producers' recycling schemes. Only in such a legal setting does a discussion about collection targets based on sales in the past make sense.

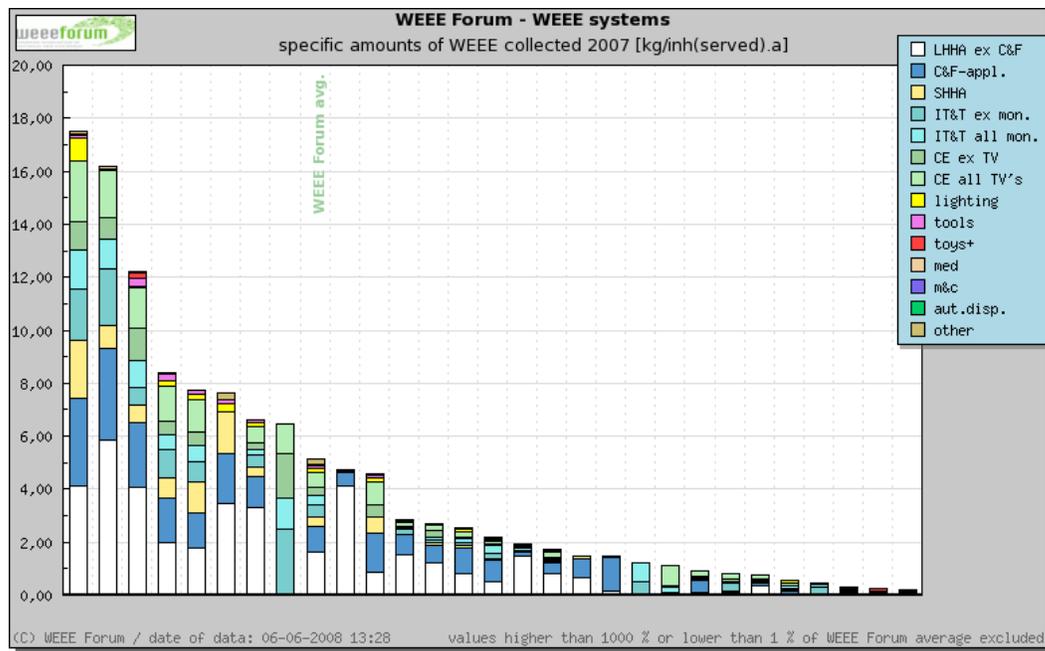
- *Obligated parties must accept to receive all WEEE that is returned to them.* In many member states, municipalities can decide to collect only WEEE with a material value.
- *Municipalities must continue to focus on what they are historically very good at: Collecting all types of waste,* including electrical and electronic waste, thus providing a universal service to society and securing an ambitious collection result. Municipalities should continue to be entitled to negotiate fair terms and conditions with all obligated parties. Parties that run collection facilities should not have a possibility to shift their costs onto other actors, such as producers. Only tax authorities can force actors to pay taxes without any pre-agreement.
- *Authorities must step up enforcement activities,* i.e. provide for effective inspection and control, spot free riders, punish illegal practices¹⁶ and impose respect for treatment requirements and shipment of waste rules¹⁷. The Proposal lays down appropriate minimum inspection requirements, yet what is required now is co-ordinated action, both among member states and between member states and the European authorities. Perhaps it is time to start considering setting up a European Waste Implementation Agency with appropriate legal instruments.
- *An extension of the ban on the export of certain types of WEEE,* and commensurate enforcement, may be considered.

¹⁶ Collection and treatment facilities ought to be officially registered and approved.

¹⁷ In Poland, municipalities fail to control scrap yards where most WEEE is returned. Not more than 300 collection points are officially registered, in a country of 38,000,000 inhabitants.

Annex I Producer responsibility organisations' collection performance

The collection performance differs from member state to member state and from system to system. In graph 1, you see that quite a few members of the WEEE Forum collected more than 4 kg/inhabitant/year in 2007¹⁸. In other words, in some member states, systems compete with other systems, thereby reducing the quantities they collect per inhabitant. For many organisations, 2007 was the 2nd or even 1st full year of operations. And not all systems collect all types of equipment.

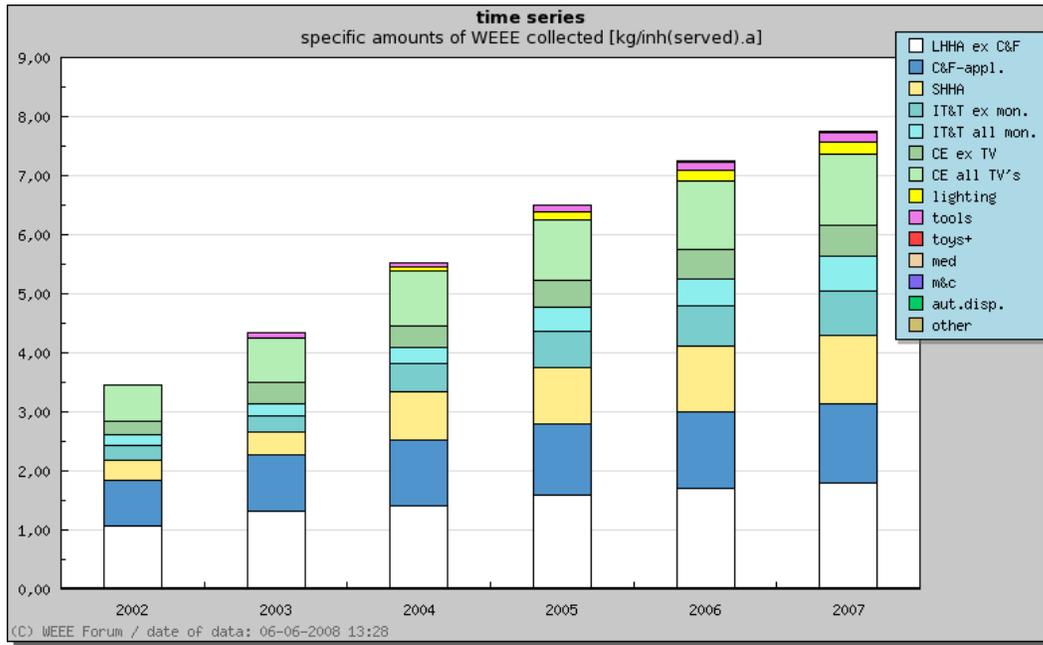


Source: WEEE Forum database, © WEEE Forum

Graph 1
Overview of quantities of WEEE collected in 2007 in terms of kg/inhabitant served per annum

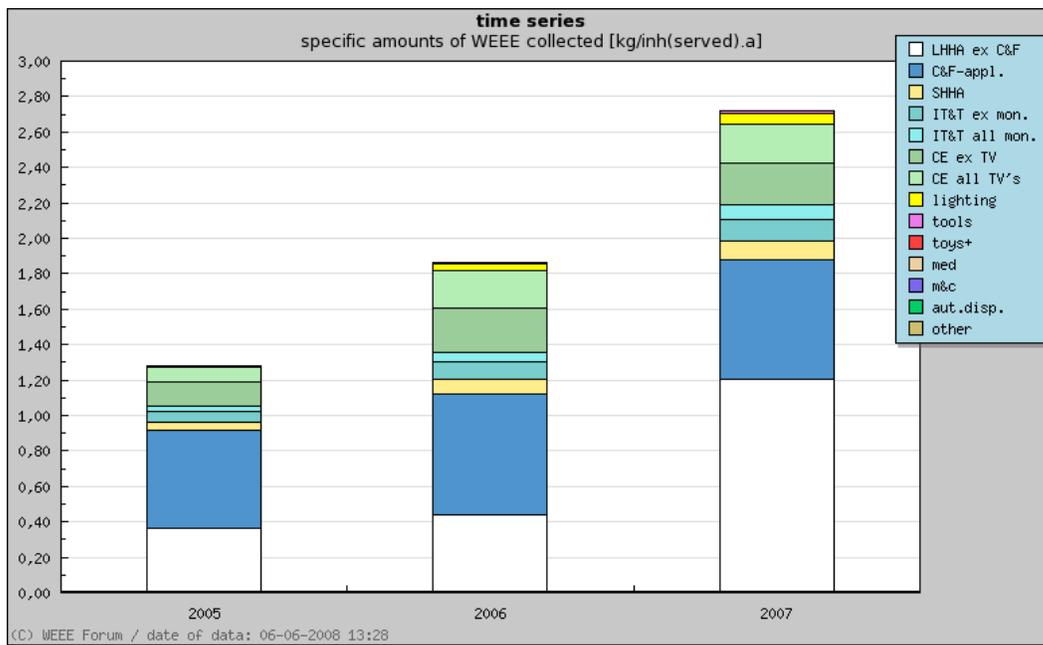
¹⁸ Note, however, that the figures are not extrapolated to encompass the total population.

Under normal circumstances, the collection performance of WEEE take-back organisations typically improves as years go by.



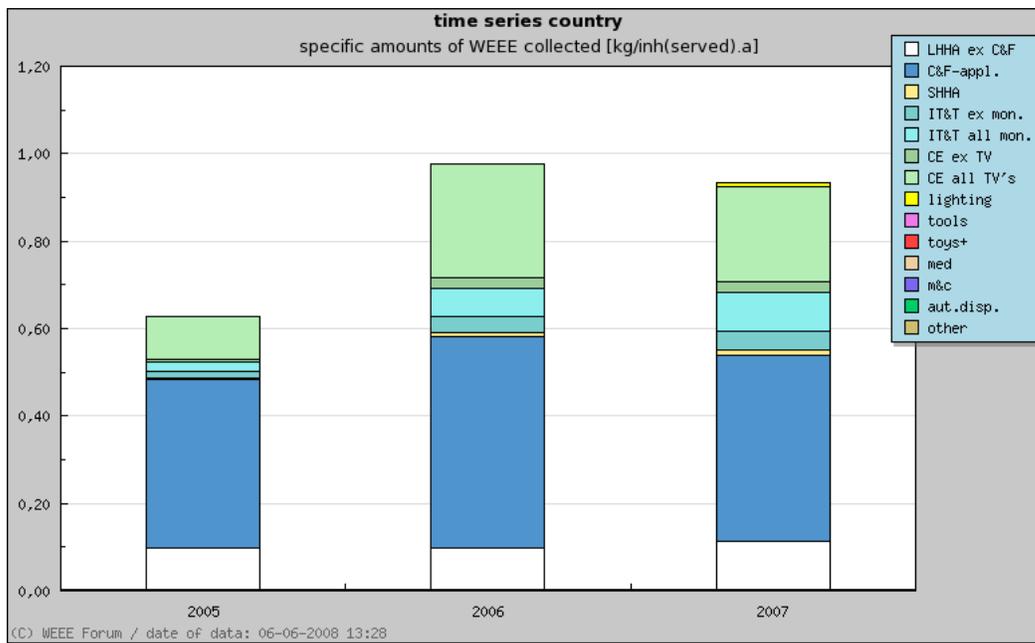
Source: WEEE Forum database, © WEEE Forum

Graph 2
Quantities collected by Recupel (Belgium), 2002-07



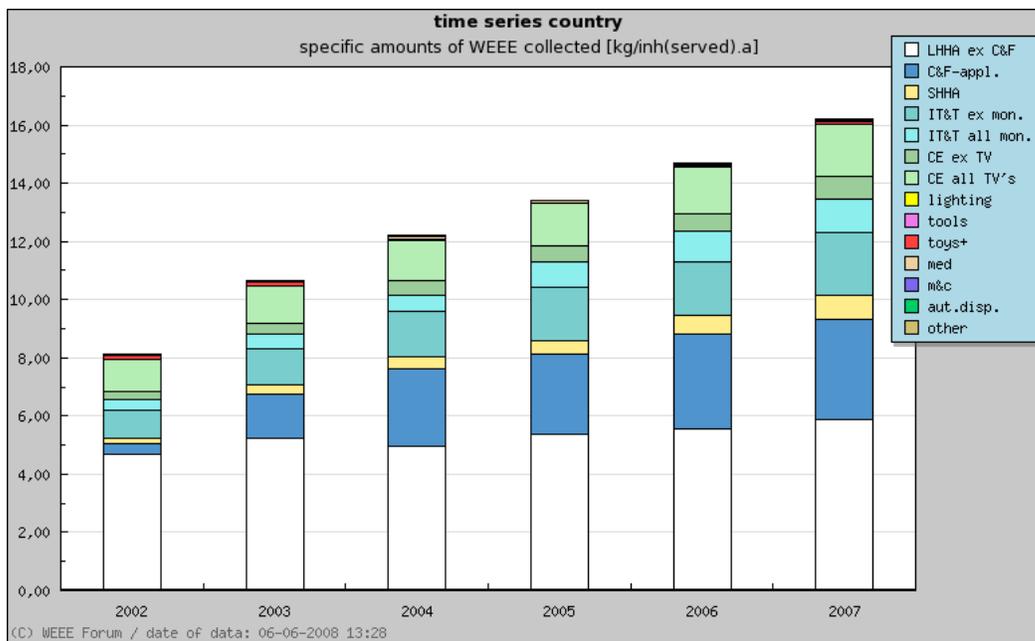
Source: WEEE Forum database, © WEEE Forum

Graph 3
Quantities collected by ElectroCoord (Hungary), 2005-07



Source: WEEE Forum database, © WEEE Forum

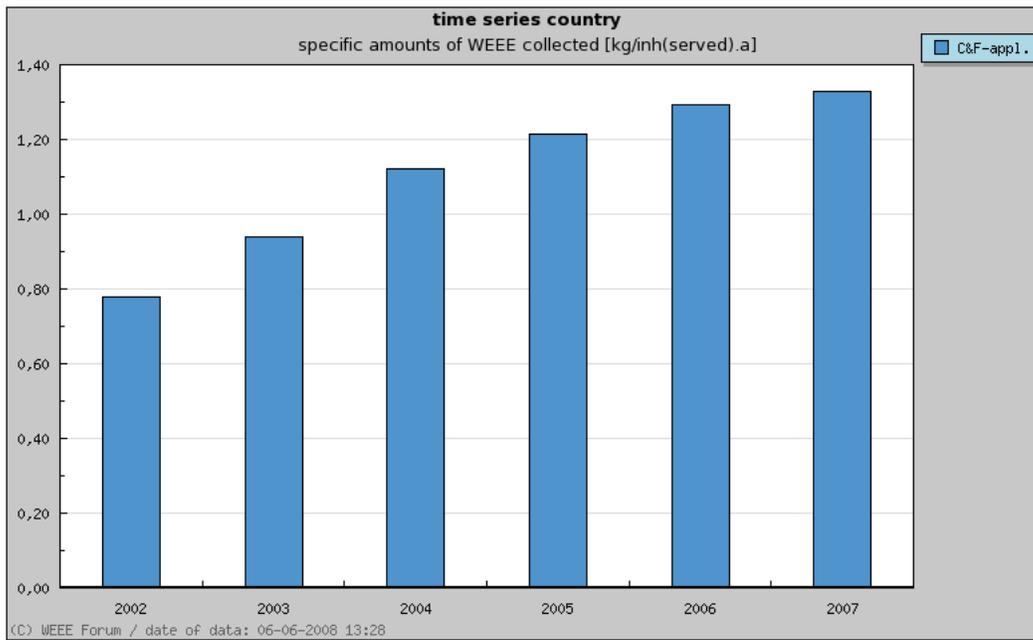
Graph 4
Quantities collected by EES-Ringlus (Estonia), 2005-07



Source: WEEE Forum database, © WEEE Forum

Graph 5
Quantities collected by elretur (Norway), 2002-07

It is particularly important that certain types of equipment are collected and properly treated, e.g. cooling and freezing appliances. Due to the long lifecycle of cooling appliances, gases such as CFC¹⁹ and HCFC, which were used until the early 1990s when it was discovered that they contribute to both ozone depletion and global warming, still make up a significant part of today's stream. These gases must be properly recovered from the WEEE.



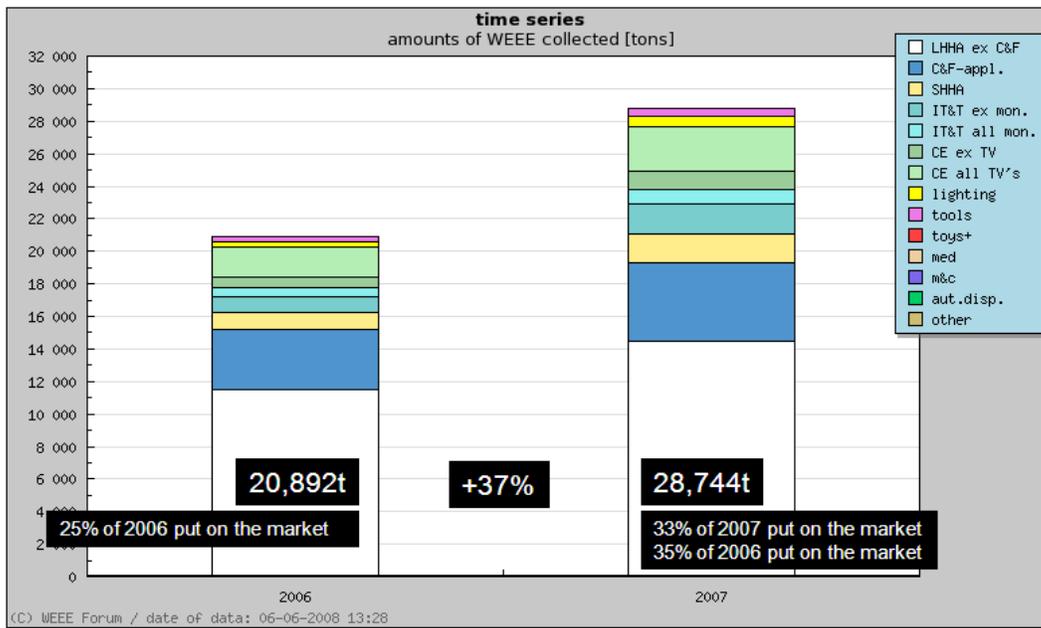
Source: WEEE Forum database, © WEEE Forum

Graph 6
Quantities of waste cooling and freezing equipment collected by Recupel (Belgium), 2002-07

¹⁹ The total prevented global warming potential by properly treating waste fridges containing CFC is more than 2,000 kg CO₂ equivalent per fridge.

Graphs 7 and 8 provide an overview of the performance of WEEE Forum members in relation to sales volumes of electrical and electronic equipment. Only very few take-back systems could reach 65 per cent, even in those member states where collected quantities have increased considerably. Even in member states with considerable experience in e-waste collection, a 65 per cent collection rate remains out of reach.

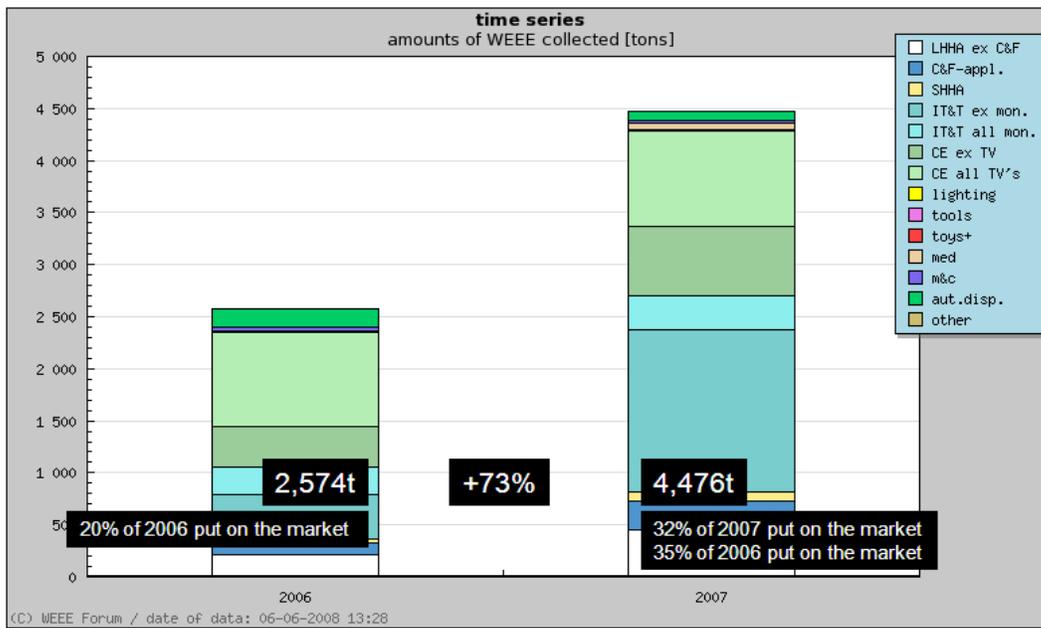
In graph 7, you see that, even though the quantities collected by WEEE Ireland increased by 37 per cent (2006-2007), the total quantities collected in 2007 in comparison with sales in 2006 and 2005²⁰ exceeds 35 per cent, but certainly falls short of 45 per cent. A similar picture is shown in graph 8 for Slovakian scheme SEWA.



Source: WEEE Forum database, © WEEE Forum

Graph 7
Quantities collected (2007) in comparison with sales (2006, 2007), WEEE Ireland (Ireland)

²⁰ The WEEE Forum does not have sales figures of 2005 in its database, so the collection percentage as formulated in the Commission Proposal, i.e. collection (year x) versus put on the market $(\text{year } x - ((\text{year } x-1) + (\text{year } x-2))/2)$ is an estimation.



Source: WEEE Forum database, © WEEE Forum

Graph 8
Quantities collected (2007) in comparison with sales (2006, 2007), SEWA (Slovakia)

Annex II

Factors that influence collection rates

According to the European Commission, the 65 per cent collection target imposed on producers reflects a percentage of WEEE that is currently already separately collected, even though only a fraction of it is reported as such, and only a fraction is managed by producers and their schemes. The rest is handled by actors that do not fall under the scope of the Directive. The Commission's rationale for introducing this target is to provide a framework within which obligated parties can get hold of that unreported WEEE fraction. One way to achieve this is by providing access to WEEE, or mandatory handover of waste by the collectors to producer responsible organisations.

However, today this percentage is not met, basically because the right conditions are not in place. What are the parameters that typically determine the respective quantities collected?

1. Those member states that require that e-waste be handed in to obligated parties such as producers or parties that act on their behalf, typically show a better performance with respect to collection than member states where retail and municipalities are entitled to trade the WEEE. Still, much depends on the level of enforcement.
2. The higher the intrinsic (material) value of the waste appliances, the more likely significant quantities will not end up at established take-back systems and will be treated incorrectly, on the contrary, make up a "complementary stream". In other words, established compliance schemes will be less likely to collect it.
3. Some member states fail to guarantee that all parties have equal access to (municipal) collection facilities. Some operators have turned their long term working relationships with collection facilities into entrenched privileges, thereby creating unfair competition with other parties.
4. At the end of the day, it is the consumer who owns the appliance and who decides to discard it. Consumers cannot be forced to return their end-of-life products to a collection facility or to hand it in to a producer responsibility organisation. He/she may sell it online, store it in the basement of his house, give it to a friend or dump it in the forest. The first link in the WEEE chain is the consumer. Leaving the consumer out of the legislation is the first root cause of failure. It should be illegal for consumers to give back WEEE to other than certified collection facilities²¹.
5. The more convenient it is for consumers or customers to return electrical and electronic waste to his local electro-shop, municipal collection facility or scrap

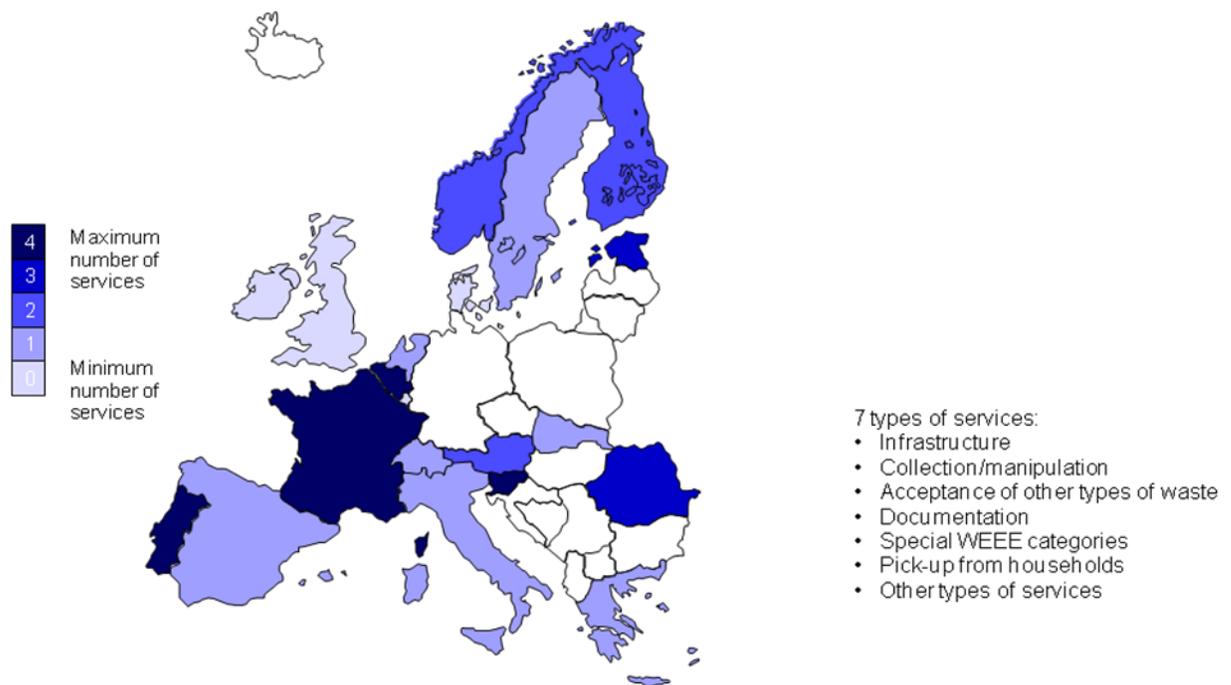
²¹ More generally, EERA, the European Electronics Recyclers Association, believes that WEEE should only be collected and handled by "registered and acknowledged parties". For example, consumers would have no other choice than to return their WEEE to an acknowledged collection facility.

yard – for example due to opening hours, the option to hand in different types of waste, the distance from his home – the more likely he will return higher quantities of WEEE and different types of electronic waste. It must be noted that poorer member states have years of massive investments ahead of them to ensure adequate waste collection infrastructure. The environmental impact of WEEE collections must however be balanced with the number of collection points made available and size of collection quantities. Regard should be made of the environmental objectives such that existing infrastructures are used where possible and multiple duplicated collection points and unnecessary vehicle journeys are not encouraged.

6. And finally there is a whole range of cultural, historic and economic factors that play a role. In certain member states, there is environmental awareness among big strands of society, and citizens are used to returning end-of-life products to civic amenities. Compliance with local environmental regulations tends to differ. Also, the bigger the distance in a particular territory, the less likely parties will buy WEEE and trade it due to transport costs. The presence of big sea ports makes it easier for unscrupulous operators to trade waste illegally.

Annex III Collection from collection facilities

The services that collection facilities provide are not compensated for to the same extent in all member states. Map 1 shows the degree of compensation for costs in relation to pick-up from households, infrastructure, collection/manipulation, other types of waste, compensation in correlation to quantities provided, documentation, special WEEE categories, and other services.



Map 1
Financial compensation of services performed by collection facilities.

Source: WEEE Forum database, © WEEE Forum

For more information on the WEEE Forum and a profile of each member organisation and contact information, see <http://www.weee-forum.org>. Drop a line with the Brussels office: pascal.leroy@weee-forum.org. Call us on (32-2) 706 87 01. Or pay us a visit: Diamant conference and business centre, Boulevard Auguste Reyerslaan 80, 1030 Brussels (Belgium).