

Input on the revision of the 'Blue Guide' on the implementation of EU product rules 2016

15 January 2020

Context:

The European Commission Directorate General for internal Market, Industry, Entrepreneurship and SMEs (DG GROW) has asked for input in updating the 'Blue Guide' on the implementation of EU product rules 2016. This update will notably reflect new EU legislation and, in particular, Regulation (EU) 2019/1020 on market surveillance.

The undersigned recommend that the Blue guide specifically lists fulfilment service providers/fulfilment houses and online marketplaces/online operators as economic operators with corresponding legal responsibilities. This would recognize the significant part these organisations play in the supply chain and placing goods on the market.

Such "economic operators" must take the legal responsibility for the compliance with Extended Producer Responsibility (EPR) legislation for products supplied through their platforms.

The rationale behind this request is obvious:

- E-commerce is increasing via online multi seller platforms and via fulfilment service providers.
- The suppliers of most products placed in the market through this type of business have no incentive to appoint a responsible person for Extended Producer Responsibility (EPR) obligations and thus, do not fulfil their financial obligations for EPR. The sale of non-compliant products (from an EPR obligation point of view) through online marketplaces is very high:
 - During 2019 [EucoLight](#) undertook a study of over 3,000 products made available for sale through online marketplaces in 10 EU countries. The non-compliance with the applicable WEEE legislation was evident across a wide range of product groups. A summary of the results is available [here](#). All sectors of electrical goods were impacted, with smaller products such as LED lightbulbs, electric screwdrivers, and tablet PCs, being particularly problematic, with **non-compliance in the range of 76-100% of the product listings checked.**
 - Non-compliance with EPR obligations in the tyre sector also represents a significant percentage of the total product placed on the market. ETRMA estimate a non-compliance rate of up to 20% in the 22 countries which have implemented EPR schemes for tyres."

- An [OECD report](#) estimated that this non-compliance represented 5-10% of all products within the scope of the WEEE directive. The Eucolight study would suggest that this average figure means the total non-compliance is higher for smaller electrical products, that are easy to store and ship.
- It is not unreasonable to assume that the non-compliance rates discovered for WEEE will be reflected in other EPR regimes, such as waste batteries, and packaging. Furthermore, could non-compliance with EPR mean that the company listing the product on the online marketplace is also more willing to breach other legislation, such as safety and intellectual property rights?
- Online multi-seller platforms and fulfillment service providers do not check if producers selling through their platforms or services are compliant with EPR. In the case of online multi-seller platforms, the E-commerce Directive currently exempts marketplaces from monitoring the content of their platforms.
- This situation is more difficult to tackle since non-compliant producers (typically >80% for EEE) are based outside the EU and yet >80% of the non-compliant products are held in stock within the EU (via the online multi-seller platform/other fulfilment house). To enforce these requirements on the tens/hundreds of thousands of producers based outside the EU (mainly China) is not possible. Prosecution of those sellers based outside of the EU is virtually impossible.
- This non-compliance distorts competition whilst compliant products and legitimate businesses in Europe face an unfair and unlevel playing field.
- This non-compliance suggests that Member States' placed on the market figures are under-stated and, consequently, the collection and recycling systems are underfinanced, which negatively affect EPR organisations and undermines the EPR eco-system as a whole. Consider also that EPR collection rates, and environmental performance in general, are overstated, and therefore the collection target, currently quite challenging, is even less achievable if those free-riders' placed on the market figures are accounted for.

Our recommendations:

- The Blue Guide needs to be updated taking into consideration the need to rethink the responsibilities of these new global operators.
- Online multi sellers platforms and fulfilment service providers have become global operators, and necessary elements of the new supply chain model, and therefore they can be considered as taking part in the supply of a product and subsequently in placing it on the market.

- If they are a relevant party in the supply of a product and subsequently placing it in the market, we recommend that both **should be considered full "economic operators" in the Blue Guide identifying and harmonising their responsibilities on product rules and EPR.**
- What type of economic operators would they then be? There is a range of options open to the Commission. To make it clear that they are liable, they might be best regarded as the importer. But whatever decision is taken, it is clear that they must be made responsible for the EPR compliance of the products supplied through their services/platforms.

The signatories to this letter:

This submission is made on behalf of the following organisations:

- EucoLight
- ETRMA
- EUCOBAT
- EXPRA
- WEEE Forum

About the signatories:

EucoLight

EucoLight is The European association of collection and recycling organisations for WEEE lamps and lighting. 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, 80 % of the lamp waste collected in the 19 countries in which they operate.

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.

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, visit the EucoLight website www.eucolight.org, follow EucoLight on Twitter @EucoLight or contact the Secretary General, Marc Guiraud (marc.guiraud@eucolight.org).

ETRMA

ETRMA represents the regulatory and related interests of the European tyre and rubber manufacturers at European level. As the voice of tyre producers, ETRMA activities focus on representing, communicating and promoting the industry to policymakers, as well as providing technical advice for its members.

Tyre manufacturers member of ETRMA are present in all national schemes implementing Extended Producers Responsibility i.e. 22 Member States with specific national legislation since late 90's.

As a matter of fact, >92% the end of life tyres arising in the EU-28 have been collected and properly treated to return to the market valuable secondary raw materials with a very positive environmental balance.

For a more detailed information, contact us, Fazilet Cinaralp – General Secretary, f.cinaralp@etrma.org or visit our website www.etrma.org

EUCOBAT

Eucobat is the European association of industry driven non-profit compliance schemes.

They offer the solution for a reliable, safe, sound and sustainable collection and recycling of waste batteries.

EXPRA

The Extended Producer Responsibility Alliance (EXPRA) is the organisation for packaging and packaging waste recovery and recycling systems which are owned by the obliged industry and work on a not-for-profit or profit not for distribution basis. EXPRA acts as the authoritative voice and common policy platform representing the interests of its members, which are all founded and run by or on behalf of the obliged industry. Over the past 20 years, our 26 members across 24 countries, including 17 EU Member States, have co-organised the collection, sorting and recycling of used packaging (with a focus on household packaging) on behalf of the obliged industry. In so doing, they fulfil their legal take-back and recycling obligations, serving over 200 million inhabitants and recycling over 20 million tons of packaging per year. For more information, please visit www.expra.eu For more information, please visit www.expra.eu

WEEE Forum

The WEEE Forum, set up in 2002, is the world's largest multi-national centre of competence as regards management of waste electrical and electronic equipment (WEEE). It is a Brussels-based, international not-for-profit association speaking for forty not-for-profit electrical and electronic equipment waste producer responsibility organisations (PRO). The forty PROs are based in Europe, Oceania, Africa, Asia and the Americas: Australia, Austria, Belgium, Canada, Czechia, Cyprus, Denmark, Estonia, Italy, Greece, France, Iceland, India, Ireland, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. In 2019, its member organisations reported collection and proper de-pollution and recycling of 2,100,000 tonnes of WEEE. Members: ANAKYKΛΩΣΗ ΣΥΣΚΕΥΩΝ, ASEKOL, Australia New Zealand Recycling Platform, Cobat RAEE, Ecodom, Ecologic, ecosystem, Ecotic, ECOTIC, Ecotrel, EES-Ringlus, EGIO, Electrão, Electrocyclusis Cyprus, ElektroEko, Elektrowin, El-Kretsen, elretur, Environ, EPRA, EPRON, Fotokiklosi, Karo Sambhav, Norsirk, Recyclia, 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 www.weee-forum.org.