

Brussels, June 4, 2008

**EICTA Contribution to the stakeholder consultation on  
the Review of Directive 2002/96/EC of the  
European Parliament and of the Council on  
Waste Electrical and Electronic Equipment (WEEE)**

EICTA<sup>1</sup> welcomes the opportunity to react to the Stakeholder Consultation on the review of Directive 2002/96/EC of the European Parliament and the Council on Waste Electric and Electronic Equipment.

Over the last couple of years the EICTA membership has been directly involved in the implementation of the WEEE Directive by setting up recycling solutions in the European Member states. By providing input on the suggested improvement options EICTA hopes that the experiences gained over the last years will provide valuable input into the WEEE revision process.

Besides this reply to the stakeholder consultation EICTA has also developed a position paper on the review of the WEEE directive. For information we have attached the position paper to this document, a digital version can also be downloaded at [www.eicta.org](http://www.eicta.org).

Please note that our reply has been structured such that the blue underlined heading relates to the relevant section in the original stakeholder consultation document.

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<sup>1</sup> EICTA, is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 59 major multinational companies and 41 national associations from 29 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

### 3.1.1 Targets on collection

Options related to recovering and recycling	EICTA Position
Option 1: Fixed mandatory collection target	Agree
Option 2: Variable mandatory collection target	Disagree
Option 3: Environmental weight based collection target	Disagree
Option 4 obligatory give-back by collection points	Agree

#### General comments

The UNU reports have shown very clearly that one of the priorities of the WEEE revision process should be to collect and recycle higher volumes of WEEE. Especially the big differences in collection rates between the member states raised questions on where the non reported WEEE ends up. EICTA believes that answering this question is essential before any decisions can be made on the target setting process in the WEEE directive

In April 2008 the combined Dutch WEEE recycling systems published a research report that studied the movement of WEEE in the Netherlands<sup>2</sup>. Via research at municipal collection points, regional storage points, reuse centres, retailers, distributors and recyclers the systems aimed at getting a clear view on the WEEE generated in the Netherlands and the leakages that occur.

It is estimated that in the Netherlands a total of 18.5 Kg of WEEE is generated per inhabitant per year. Of this generated WEEE about 5.7 kg is treated by the Dutch recycling systems ICT Milieu and NVMP. At the Municipal collection points 2.5 kg of WEEE is send directly to scrap metal dealers. Furthermore the scrap metal dealers receive 3.6 kg that mainly consists of boilers and central heating system from installers or fitters.

It is estimated that retailers send around 3 kg of metal dominated products out of their collected 4.7 kg directly to recyclers. [Table 1](#) shows the summary results of this research

**Table 1 Mass Balance Household WEEE in Netherlands**

Product categories	Recycling Systems	Municipal leakage	Reuse + installers	Waste bin	Retail & uncertain	WEEE (total)
1a Large Household Appliances	0.82	1.25	3.3	-	2.64	8.0

<sup>2</sup> Witteveen+Bos, Onderzoek naar complementaire afvalstromen voor e-waste in Nederland, 10 April 2008

1b Household Cooling Appliances		1.55	-	-	-	0.28	1.8
3a IT and Telecom	<i>In 3b</i>		-	-	-	-	
3b Personal Computer		1.25	0.95	-	0.30	0.19	2.7
5 lighting (energy saving lamps)		0.02	-	-	0.07	-	0.1
2 Small Household Appliances	<i>In 4</i>		-	-	-	-	
4 Consumer Equipment		1.73	0.30	0.3	1.11	1.58	5.1
6 Tools		0.35	-	-	0.37	-	0.7
7 Toys		0.02	-	-	0.18	-	0.2
<b>TOTAL</b>		<b>5.7</b>	<b>2.5</b>	<b>3.6</b>	<b>2.0</b>	<b>4.7</b>	<b>18.5</b>

The above table shows clearly that although only 5.7 kg of WEEE is currently being reported as recycled WEEE in accordance with the WEEE Directive, at least 13.8 kg is being recycled in the Netherlands. This clearly shows that although the WEEE Directive holds producers primary responsible for the recycling of WEEE there are many other stakeholders involved that have a great influence on the volumes collected and recycled. As such the revision of the WEEE Directive should define in more detail the responsibilities of all stakeholders involved in the collection of WEEE. Clarifying the responsibilities between the stakeholders can ensure that all WEEE treated will be accounted for and that the minimum treatment requirements are met.

Taking into account that the lack of visibility of the WEEE streams is causing great difficulties in determining what volumes are actually collected, EICTA is of the opinion that it is too early to start reviewing the methodology of how to set targets. Instead the aim of the review should be on getting a good overview of all WEEE collected and treated.

#### **Option 1:**

EICTA believes that fixed mandatory collection target for Member States, differentiated per Member State would be a good solution to ensure that differences in sales volumes and collection infrastructure per member state are taken into account

#### **Option 2:**

A variable mandatory collection target would not allow for differentiation based on differences in collection infrastructure. Furthermore EICTA is concerned that a target based on a % of sales per product category would complicate the target setting process as currently no methodology or scientific data is available to support differences between product groups. It also has to be taken into account that apart from the quantities put on the market there are other influencing parameters such as the recycled material value influencing the collection rate.

#### **Option 3:**

The option to differentiate based on environmental weights would lead to complicated discussions on the methodology to establish and measure the effect of these targets. EICTA does not believe that this will be beneficial for the success of the WEEE Directive.

#### **Option 4:**

EICTA supports the obligatory give-back by collection points to the producer responsibility organisations (PRO's) or to individual schemes as this would solve the problem of a lack of visibility of the streams that are treated and collected. If all collected WEEE is given back to producer

responsibility organisations (PRO's) or to individual schemes this would ensure that the reported collection volumes reflect the actual recycled volumes in that member state.

**Additional option:**

Another option that could be considered to improve the current level of separate collection of WEEE would be a reporting obligation on all the stakeholders that recycle WEEE. This would however lead to a huge increase in reporting obligations and in light of the better regulations program this is unwanted. Instead of placing a reporting obligation on all other stakeholders, including thousands of small retailers, it could make more sense to include a reporting obligation in the waste licenses required to treat WEEE. This means that when a recycler treats WEEE he needs to report on these volumes on monthly basis to the central waste authorities in the country. This will ensure that all WEEE recycled will be reported on instead of only the volumes recycled by the official producer recycling.

**3.1.2 Targets for recovery, component, material and substance reuse and recycling**

Options	EICTA Position
Option 1: <b>Increase</b> the current targets, for all or some categories.	No positions
Option 2: <b>Introduce a target for category 8 equipment</b> (medical devices);	No positions
Option 3: <b>Material based targets</b> for all WEEE or per product category;	Disagree
<b>Option 4 Stimulation of outlet market</b> for recycled and recovery	No positions

EICTA does not have strong views on options 1 and 2. We do not think that option 3 which suggest material based targets would lead to an improvement of the Directive, Inline with our comments on option 3.1.1 we do not think that an appropriate methodology exists for setting or measuring material based targets. Furthermore given that a number of countries are relatively new to WEEE and to establishing a recycling economy it is too early to move from a general weight per inhabitant based target to material based targets.

As a general comment on the treatment targets EICTA would like to emphasize that in order to have a level playing field for the producers, who are responsible for keeping targets on recovery, component, material and substance reuse and recycling, a unified European determination method for calculating performance against those targeted rates is seen necessary."

**3.1.3 Targets for reuse of whole appliances**

Options	EICTA Position
Option 1: Set a target for reuse of whole appliances to be achieved by a certain date.	Strongly disagree
Option 2: Include the reuse of whole appliances in the current or increased components, material and substance reuse and recycling targets.	Agree

Option 3: Give obligatory access for the reuse sector / organisations to collected WEEE to select that equipment that could meet the criteria for being reused, refurbished or repaired.	Disagree
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### Option 1

EICTA support the reuse of electronic products but question the feasibility of establishing reuse targets within the WEEE Directive.

**Research shows that it would be very difficult to apply reuse targets to IT in the waste stream.** In 2007 Hewlett Packard and the Technical University of Vienna 2007 undertook research into the reuse potential of used IT equipment collected in Germany as a result of the implementation of the WEEE directive ('HP/TuV study'). In total, 167 tonnes of IT equipment from 7 collection points was analysed. The report found due to a variety of factors it would be very difficult to apply reuse targets to IT in the waste stream.

**The economic viability of reuse diminishes rapidly with the age of ICT products.** Storage by the first user reduces the resale potential of products even further. HP/TuV study found for used PCs and laptops, the resale value declines consistently with the age of equipment. The value of a PC falls much more rapidly than a laptop. The markets for the reuse and refurbishment of WEEE are dependent on the age, brand and model of the equipment. Refurbishers determine the reuse potential of equipment based on the technology which the products possess, such as the PC processor speed. There is great variability in the resale value of different IT products over time. Printers and displays have little predictable resale value. In the case of CRT monitors, the remaining value is very low. Darby and Obara (2005)<sup>3</sup> observe that in particular small items of WEEE have a very low value for reuse. Knoth *et al* (2001)<sup>4</sup> conclude that electronic waste is mostly regarded as scrap and treated in a destructive way, which makes it impossible to re-use equipment, components and parts.

**Once products have become waste, they have little value for reuse.** The HP/TuV study found products in the waste stream have little or no reuse potential. The amount of IT which is 'potentially reusable' is 2.86% (it appears reusable). The amount of IT which is 'technically reusable' is 0.55% (it switches on and operates). This is attributed to the high proportion of CRT based products and ink based printers within the municipal waste stream, and also to the presence of partly dismantled laptops and PCs. An earlier study conducted by HP in The Netherlands and Sweden in 2003 showed that products returned through public WEEE collection schemes are very old. The average age of PCs was approximately 7 years and more than 8 years for printers. There is hardly any market for IT equipment of this age.

<sup>3</sup> Darby, L. and Obara, L. (2005) Household recycling behaviour and attitudes towards the disposal of small electrical and electronic equipment. *Resources, Conservation and Recycling* 44. 17–35.

<sup>4</sup> Knoth, R. Hoffmann, M. Kopacek, B. Kopacek, P. (2001) Re-Use of End-of-Life Electronic Equipment and Components--Logistic Aspects. *Ecodesign, 2nd International Symposium on Environmentally Conscious Design and Inverse Manufacturing (EcoDesign'01), 2001, p. 692*

**Storage and cannibalization decreases the financial viability of reuse.** The HP/TuV study found that products, particularly laptops and PCs, are often partially dismantled for data security and value recovery reasons. Hard disks are removed and destroyed to secure personal data. Other parts are cannibalized to be sold for spare parts. These products have no reuse potential.

**The need for data wiping, consumer guarantees, software licenses and testing adds cost and decreases the financial viability of reuse.** The EU-Regulation on warranty for consumers is a very high barrier for the sale of products for reuse. If used products are sold on a commercial basis, a 12 month warranty is compulsory in all EU Member States. The status / condition of a used product, especially if it is taken out of the waste stream, is very difficult to access. Even in the few cases where it might be possible (e.g. certain mechanical parts), comprehensive testing to avoid the product breaking during the warranty period adds huge cost. In conjunction with refurbishment cost, the cost of potential warranty repairs / replacement renders reuse on a commercial basis not viable. Prices achieved on the market for reused products (less than 25% of those of new products) are not covering the cost of a commercial reuse in many cases.

**The potential for reuse is higher for products that have not yet entered the waste stream.** The HP/TuV study found that there is more significant business potential for professional reuse before products enter the waste stream. In 2007, ICT Milieu (WEEE ICT compliance scheme in Netherlands) surveyed 14,000 households. People were asked what they did with their ICT products when they had finished with them (as the first user). The results support the HP/TuV study data – up to 65% reuse rate is achieved by direct reuse from the first user (after first retirement; includes private sale on Ebay/classified ads, donation to family member or charity).

**It is not possible to accurately measure reuse.** Attempting to measure reuse is very difficult and therefore inaccurate. A great deal of informal reuse is carried out by the consumer market through passing on products to family and friends, through classifieds ads, e-bay and other such mechanisms. All this happens before the end-user discards the product. It would be impossible to measure this level of activity in such a vast market. Setting targets for reuse is consequently meaningless.

**Social enterprises and refurbishment organisations can often over estimate the value of IT for reuse in the waste stream.** The HP/TuV study found there is a large variation in the knowledge of workers who perform the visual checks to gauge the reuse potential of products. Lower percentages of reuse potential are seen where the reuse market organisations are more experienced. Less experienced reuse organisations tend to overestimate the reuse potential of a product. Social enterprises have significant potential to improve the remarketing of their products; particularly if they re-market products supra-regional in regions with different income structures.

**Setting targets could lead to negative environmental impacts.** Reusing products which are more than five years old can have negative environmental impacts because of the lower energy efficiency of these products. For example a 10 year old refrigerator uses 582 kWh per year, three times as much energy as a new model (194kWh/year)<sup>5</sup>. A new Sony TV consumes 0.5W in stand by mode compared with 7.5W in 1995. Therefore replacing older equipment can significantly reduce global CO<sub>2</sub> emissions. The reuse of refurbished appliance could hinder increased energy efficiency and act against targets to reduce CO<sub>2</sub> emissions.

Truttmann and Rechberger (2006)<sup>6</sup> found that even intensive product reuse of electric and electronic equipment reduces total resource consumption (materials and energy) of a highly developed industrial economy by less than 1%, and that efficient recycling achieves a higher contribution to resource conservation. Rose and Stevels (2001)<sup>7</sup> which showed that the environmental benefits are very low compared to materials recycling. Any proposal to introduce re-use targets for WEEE, on the assumption that this will automatically result in reducing environmental impacts, needs to be tested before it incorporated in EU legislation.

**The UNU WEEE Revision Study<sup>8</sup> did not support the introduction of reuse targets.** The European Commission contracted United Nations University to examine the case for establishing reuse targets. The study concluded (pxii):

*Targets for reuse should be further researched outside of the WEEE Directive and preferably included in EuP to avoid rebound effects of higher energy consumption compared to newer appliances.*

The UNU study found that reuse could have negative environmental effects where older less energy efficient equipment is reused. The study also cited the practical problems posed by the need to remove personal data from the hard drive of computers to ensure data security; and the additional costs of updating software and operating systems, without which products are unattractive for new consumers. UNU conclude that given that practical experiences have shown that reuse possibilities are very low (i.e. much lower than 100%), the argument for a separate target for reuse of whole appliances is weak.

**Barriers are created by the definition of waste reuse within waste regulation.** A product classified as waste is subject to regulatory requirements concerning (a) Storage and (b) potential trans-boundary movement across the Member States. In some countries, such as the UK and France, storage sites need to hold a valid waste management license, awarded regionally and only after a burdensome application. Waste transport licenses are also necessary as soon as the returned equipment is classified as waste. As a result of the classification, the easier option or greater motivation is often to recycle products. If returned EEE is to be classified as waste, we would support lighter

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<sup>5</sup> Comparison of a 10 year old Electrolux refrigerator with a new ERB 3105 (Source: Sundstrom, H (2006) *Driving Market Penetration of Energy Efficient Appliances*. Electrolux. ECCP Topic Group meeting, Feb. 23, 2006)

<sup>6</sup> Truttmann, N. and Rechberger, H. (2006) Contribution to resource conservation by reuse of electrical and electronic household appliances. *Resources, Conservation and Recycling* 48 (2006) 249–262

<sup>7</sup> In United Nations University (2007) 2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE) (European Commission, Belgium)

<sup>8</sup> United Nations University (2007) *2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE)* (European Commission, Belgium)

procedures (for movement, transport, storage and trans-boundary transfer) concerning WEEE sent for reuse / or WEEE that is likely to be reused.

**The review of reuse targets for the Packaging Directive demonstrated that targets would be difficult to apply, and would not lead to environmental benefits.** During 2006 the European Commission reviewed the case for establishing reuse targets within the Packaging Directive. The Commission rejected the case for reuse targets following research which revealed that the reuse of packaging is only beneficial for the environment over short transport distances.

**Reuse is governed by consumer behaviour.** Producers have no influence over whether products are reused. The producer has little control over what comes back to him and should not be subjected to heavy or unachievable re-use or collection targets. No producer can bind its customers to return the products to the producer. These products may still have value and customers may use their own brokers for reuse as they still have legal ownership and control of the products even at end of life. As these brokers are not under the control of producers it is impossible to get a good overview of the number of products being reused. Another challenge is how to capture information of parts processed and reused by asset companies.

#### **Option 2**

EICTA supports option 2, to include the reuse of whole appliances in the current or increased components, material and substance reuse and recycling targets. This ensures that reuse is not discouraged or excluded by the Directive.

#### **Option 3**

EICTA does not support option 3, to give obligatory access for the reuse sector / organisations to collected WEEE. Whilst EICTA supports the objective of this option, there are several practical problems.

**Firstly it is likely Municipalities would be concerned to grant comprehensive access without control over the legitimacy and behaviour of those people that are allowed on site.** Unregulated access could create health and safety problems and also promote the illegal treatment and export of WEEE.

**Secondly EICTA is concerned that this could lead to the greater cannibalisation of WEEE.** It should not be possible for reuse organisations to cannibalise WEEE. Producers are only responsible for the recycling of whole products.

There may be legal implications that need to be considered if waste left in a collection point by a consumer on the understanding that the product is going to be recycled, subsequently gets re-used and the original product owner's data has not been erased.

## **3.2 THE SCOPE OF THE DIRECTIVE**

EICTA has provided comments below regarding needed scope clarification and width of scope. Whatever option is ultimately chosen, it is absolutely essential that scope issues are completely harmonized across all Member States. Without such harmonization, the ability of the Directive to achieve its goals will be severely compromised.

### **3.2.1 Options for clarification of the scope**

Options	EICTA Position
Option 1.: FAQ Criteria Approach:	Most favoured
Option 2: Fixed List	Agree
Option 3: Classification of Products as B2B or B2C	Disagree
Option 4 : <b>Define Scope Using RoHS Directive</b>	least favoured

### FAQ Criteria Approach:

EICTA's most-favoured option is clarifying the scope by formalizing criteria used in the Frequently Asked Questions (FAQ) document. However, the FAQs, as currently written, are not specific enough and have been used by various Member States to come to different conclusions as to whether a particular product is in scope. We believe that clarifying language needs to be added to the FAQ criteria including more detailed language describing how the FAQs apply when evaluating whether a product is within the scope of the WEEE Directive.

EICTA agrees that the Directive should apply only to finished products. The FAQs describe that a finished product has both a direct function and its own enclosure, and, if applicable, ports and connections for end users. Internal semiconductor computer components including, but not limited to microprocessors, motherboards, and internal memory chips clearly do not have their own enclosures; however, some Member States have incorrectly applied the current FAQs to suggest that such internal components may be within the scope of the Directive depending on how they are sold. We believe that the determination of whether a product is in scope should be made solely on the characteristics of the product and that the method of sale is irrelevant when determining scope. Some Member State(s) also mistakenly consider that such components have a direct function and rely on the FAQs to uphold that internal components are finished products. Clear FAQ language would help avoid controversial interpretations.

The recently released report entitled "2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE)" dated August 5, 2007 and prepared by United Nations University for the European Commission (hereinafter referred to as the "UNU Report") commented on the importance of clearly defining the scope of the Directive. The UNU report concluded that adding parts [components] into the scope of the Directive would have low environmental effectiveness since the current scope already includes most relevant products and could potentially complicate matters by treating components differently when sold individually versus when sold to OEMs (see Table on p. 243 of UNU Report).

The language of the current Directive supports this approach. Article 3(b) defines components that are part of the product at the time of discarding as WEEE. Although not directly stated, this language implies that components would not be subject to the requirements of the Directive until they are incorporated into a final product. The language from the original proposal for the WEEE Directive more clearly expressed this intent as follows: "The provisions regarding waste electrical and electronic equipment apply **only** to components, sub-assemblies and consumables **when** these materials are part of the product at the time of discarding. (Emphasis added)" (See p.28, Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment/Proposal for a Directive of the European of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment, June 13 2000). Components, even if sold standalone, are ultimately integrated into

devices. Applying WEEE obligations to both components and devices would therefore result in a double-computation which was certainly not the original purpose of the Directive.

In addition to the scope issues regarding internal components, there are also important scope questions regarding fixed installations, medical products, etc. that are not sufficiently answered by the current FAQs. One of the weaknesses of the FAQ approach is that ambiguities for certain products may remain or occur for future products after the FAQ criteria are incorporated into a revised Directive. If the Commission decides to adopt this approach, there would need to be a methodology for Producers to obtain a scope determination if necessary for particular products.

**Fixed List :**

If the Commission determines that the FAQ approach discussed above may not produce the desired certainty regarding which products are in scope, EICTA believes that a fixed list of in scope products is a viable alternative. Such a list would provide more certainty since any product not appearing on the fixed list would not be in scope. The disadvantages of this approach is that a fixed list would be long and need regular updating to account for new product types being put on the market. A list of products falling outside the scope would be shorter and accomplish the potentially result in the desired level of certainty; however, the list would be cluttered with many products that are clearly outside the scope and are not in question. Such a negative list would also require periodic updating. If the list approach is used, we believe that a fixed list of in scope products if preferable to a list of out of scope products.

**Classification of Products as B2B or B2C:**

EICTA does not favour this approach as a way to resolve the uncertainties regarding scope. We believe that the categorization of products as B2B or B2C is a topic more appropriately addressed in Section 3.2.2 regarding width of scope (see comments in Section 3.2.2).

**Define Scope Using RoHS Directive:**

Using the RoHS Directive to define the scope of the WEEE Directive is EICTA’s least favoured option to resolve the current confusion regarding scope. The RoHS and WEEE Directives have many similarities; however, the purpose of the Directives are very different. The RoHS Directive focuses on material content while the WEEE Directive involves end of life management of electronic products.

**3.2.2 Options on the width of the scope**

Options	EICTA Position
Option 1.: Include Other Product Types	Disagree
Option 2: <b><u>Maximise Scope and Include Components/Spare Parts</u></b>	least-favoured
Option 3: Exclusion of Product Types/Categories	Agree

**Include Other Product Types:**

EICTA does not favour this approach. The EU WEEE Directive already has an extremely broad and ambitious scope. Instead of adding additional product types to a Directive that is only a few years old and has been implemented unevenly among the various Member States, we strongly believe

that the Commission should clarify which products are within the intent of the original Directive to reach an even level of interpretation and implementation throughout the EU.

**Maximise Scope and Include Components/Spare Parts:**

This option is EICTA’s least-favoured approach. We have consistently opposed the expansion of the scope of the Directive to include components and spare parts. It is clear that the intent of the original Directive was to not include components and spare parts within the scope. Since products are recycled at the finished product level, the Directive’s scope should be limited to finished products. Extending the scope to the component and spare part levels would add significant administrative cost and burden without any demonstrated environmental benefit. As discussed above, the UNU Report concluded that such an expansion would have low environmental effectiveness (see discussion in Section 3.2.1).

**Exclusion of Product Types/Categories:**

EICTA prefers this option. We believe that B2B products should be excluded from the scope of the WEEE Directive if the Producer can demonstrate that the products are not normally used within a private household, as mentioned in the UNU report on the WEEE revision. Dual use products that are used both in private households and businesses should continue to be in scope.

B2B equipment is not treated within the municipal waste stream because of technical and business reasons. Most part of this B2B equipment has been managed through Producer’s Product Take Back Processes for years. Basically the reuse of entire equipment or spare parts is a key component of B2B producers business to improve customer service and cost. Including B2B within the scope of the Directive has resulted in the need to set up different recycling arrangements, duplicating efforts and under-utilizing them, since there were already established products take back mechanisms for their treatment. In most of the cases, this used B2B equipment can be reutilized entirely or by parts for the producers. At the end of the product take back process, there is a residual value, (very high for most of the IT B2B equipment), which makes possible B2B user to receive money back. End users are not likely to return B2B equipment through a Producer’s established WEEE takeback system when they can receive money from a third party or a better new lease rate. In those instances, B2B equipment is responsibly managed completely independent of the WEEE Directive.

Option 5 : Placing the scope of the Directive under Article 95 legal basis  
 As will be discussed in more detail in section 3, EICTA would like to propose to place the scope of the Directive under art 95 of the Treaty. This would ensure that the scope would be harmonized across the member states.

**3.3 THE OPERATION OF THE PRODUCER RESPONSIBILITY PROVISIONS**

Options	EICTA Position
Option 1: <b>Bring the provisions under a different legal basis</b>	Agree
Option 2: <b>Harmonise the implementation</b> of the allocation of financial responsibility, the frequencies and formats of reporting, the registration and the making information available;	Agree
Option 3: <b>Stimulate eco-design</b> through defining targets for reusability, recyclability and recoverability of electrical and electronic equipment.	Disagree

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**Option 1: Bring the provisions under a different legal basis**

The WEEE directive, being based on Article 175 of the Treaty, inherently poses a threat to the realization of the internal market related to free circulation of products and services. However, Recital 8 of the WEEE directive clearly indicates an objective of preserving the internal market by harmonizing conditions for waste handling (*“The objective of improving the management of WEEE cannot be achieved effectively by Member States acting individually. In particular, different national applications of the producer responsibility principle may lead to substantial disparities in the financial burden on economic operators. Having different national policies on the management of WEEE hampers the effectiveness of recycling policies. For that reason the essential criteria should be laid down at Community level.”*).

Experience has shown that this aim to achieve a functional internal market approach to waste management has not been realized. During the implementation of the WEEE Directive into national law there have been many problems with differing implementations in the member states. These differences are partly caused by ambiguous definitions in the Directive but also partly by the freedom in implementation of the Member States given by Article 175 of the Treaty. This paragraph will focus on the freedom during implementation and the related problems.

The WEEE Directive relates to the environment, which is dealt with mainly on a national basis in line with Article 175 of the Treaty. Although the WEEE Directive relates to the environment there are a number of elements contained in the WEEE Directive that are critical to preserve the internal market aspects. We believe that for these articles the legal basis should be Article 95.

We do however understand that for some articles of the Directive Article 175 of the treaty is appropriate and therefore we would like to advocate a dual legal basis for the revised WEEE Directive in which articles that affect the internal market aspects are covered by Article 95 of the Treaty. This thinking is also inline with the findings of the recently released report entitled *“2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE)”* dated August 5, 2007 and prepared by United Nations University for the European Commission (hereinafter referred to as the *“UNU Report”*).

In the WEEE Directive, the following clauses should have Article 95 as legal basis.

**Table 2 Possible WEEE Directive articles under Article 95 of the Treaty**

Article	Title	Comments
2	Scope	The scope of the WEEE Directive is the basis of the producer obligations. A difference in scope in the Member States will affect the internal market. For instance product marking might not be required in country A where the product is produced but is required in country B where the product is exported to.
3	Definitions	Differences in definitions will cause several problems. Some of these problems are related to the administrative burden on industry but differences in for instance the definition of producer could create barriers to intra-community trade. For more details see the different paragraphs of this

		document that discuss the definitions in more detail.
4	Product design	Freedom for member states to introduce national design requirements will immediately affect the internal market. All product related matters should be dealt with at Community level.
6	Treatment	A harmonized, pan-European approach to waste treatment is needed to facilitate a healthy competition and level playing field, thus improving the effectiveness of treatment within the EU.
7	Recovery	Same as for article 6.
10	Information for users	The Directive should allow for a common product marking requirement, and possible use of symbols in manuals for information to users. National product marking requirements will create barriers to intra-community trade
11	Information for treatment facilities	Similar to article 10 of the Directive, the information requirements for treatment facilities should be harmonized across the EU. Different information requirements between Member States will only lead to an increased administrative burden with no environmental gain.
12	Information and reporting	Different reporting systems are costly and serve no purposes. Since the Commission expects uniform reporting from member States, industry should also be allowed to use a uniform reporting method. Harmonised EU registration eliminates barriers to free trade in the internal market.

Option 2 **Harmonise the implementation of** the allocation of financial responsibility, the frequencies and formats of reporting, the registration and the making information available;

Due to a lack of harmonization producers are facing different requirements on similar issues at different MSs, making business more cumbersome. In the UNU reports it was also highlighted in section 11.5.4 that simplification and harmonisation is one of the key conditions for success of the WEEE Directive. EICTA would like to highlight following difficulties and propose corresponding solution / approach:

- **Different definitions of weight**  
One single definition of weight. *the weight of the unpacked product including all electrical & electronic accessories, but excluding batteries, non-electronic / non-electrical accessories, consumables, documentation and packaging that normally accompany the product.*
- **Criteria to discern “WEEE from private households” from “WEEE from user other than private households”**  
See item 6 of this paper.
- **Different Segmentation by Type of Equipment (ToE) for the calculation of historical responsibilities**  
We believe that stakeholders should strive for a situation in which the registers use the same (as simple as possible) classification of types of equipment, as well as common guidelines for ambiguous cases of this classification. This would not only simplify compliance for producers

but would also increase the quality of the information and therefore facilitate the reporting of coherent and comparable data from Member States to the Commission.

- **Differences in content and frequency of reporting requested by National Registers leading to complexity in IT systems and unnecessary administrative burden**

We would like to see that all registers use the same set of data or registration form, as aligned as possible with the data reporting requirements from Member States to the Commission, and the same reporting frequency. The reporting frequency should be chosen so as to minimize workload but also take into account seasonality in sales and be high enough to 'capture' temporary market entrants. A quarterly reporting seems to fulfill all these criteria.

- **Registration of foreign companies within the EU**

We believe all national registers should be open for registration to any producer legally established within EU, subject of course to the same obligations as any company established in the Member State. In addition it should be allowed for European producers to take over the obligation from the default national producers. Clearly, legal provisions must also be in place to allow Member States to pursue legal action against companies which have committed to fulfil the legal obligations in their territory, but do not have a legal presence (e.g. using similar approaches to the general product Safety Directive or allowing producers to discharge their obligations to local legal representatives or the Compliance Schemes).

- **Individual Producer Responsibility**

During the review of the Directive there is an opportunity to strengthen the freedom of choice for IPR. In the implementation of article 8.2 of the Directive, it should be made mandatory for Member States to give producers the option to choose between individual or collective solutions based on their product portfolio and business models used.

### **Proposed way forward towards more harmonisation**

We recommend to strongly encourage every step towards a harmonised EU registration process leading to harmonised national requirements and procedures, or even a single EU-wide registration body. The national registers should at least follow a coordinated approach towards registration and should regularly exchange their data.

We believe that it would be both appropriate and essential to involve the Registers in the discussion around the harmonization of (the processes of) those registers. At a conference on the subject of harmonization of registers held in February 2006 at INSEAD in Fontainebleau it became clear that there is willingness among the registers to discuss harmonizing their procedures. Moreover our members see that several authorities and registers are currently still struggling to set up registration procedures, cooperation could certainly help those organisations and foster harmonization.

Option 3 **Stimulate eco-design** through defining targets for reusability, recyclability and recoverability of electrical and electronic equipment.

By the adoption of Directive 2005/32/EC on 6 July 2005, establishing a framework for the setting of ecodesign requirements for energy-using products the European Commission now has a tool to develop ecodesign requirements for amongst others EEE. Via the impact analysis that is required under the EuP Directive all environmental impacts of the product's life cycle are taken into account and via a proper assessment of the improvement potential the implementing measures of the EuP Directive will lead to justified ecodesign requirements.

One of the main advantages of the EuP Directive is that it is based on art 95 of the Treaty. Via article 95 of the Treaty there will be a harmonized implementation of the implementing measures of the Directive. This harmonized implementation will ensure that free movement of goods on the community market is guaranteed.

As the WEEE Directive is based on article 175 of the Treaty it only sets a minimum requirement and it allows for freedom during the implementation into national law. This freedom of implementation is well justified as the differences in waste management in the Member States will require a different implementation of the Directive. There are however articles, such as Article 4, of the current WEEE Directive where this freedom of implementation may hamper the free movement of goods on the community market. Under art 4 Member States could implement additional eco design requirement and these differing product related requirements could be lead to problems on the internal market.

Taking into account that article 4 of the WEEE Directive could lead to problems on the internal market and the fact that the new EuP Directive is specifically develop to set eco design requirements We would propose to delete article 4 of the current WEEE Directive.

### 3.4 TREATMENT REQUIREMENTS

Options	EICTA Position
Option 1: <b>Introduce</b> the development of treatment <b>standards</b> ;	Most favoured
Option 2: Include a <b>definition of "remove"</b> ;	"Short term fix"
Option 3: <b>Modify</b> the entries of the current list in Annex II.1 to the Directive in function of technical progress including a reference to the exemptions granted under the RoHS Directive to ensure that for those applications, the hazardous components, parts and substances are removed.	Disagree

#### **Option 1**

EICTA favours the introduction of mandated treatment standards, setting effluent limits for processes in line with the BAT-BREFS already applied, and where relevant certain quality aspects regarding the result of different processes.

The introduction of treatment standards enables producers to comply more easily with article 6.1. Such standards will also support use of proper treatment processes globally, as producers operating on a global market can utilize them as references in their negotiations with treatment partners in other regions.

With the introduction of mandated treatment standards and the setting of environmental objectives for waste treatment without describing techniques, Annex II in its present form should be removed from the WEEE Directive.

#### **Option 2**

In the absence of treatment standards, the "Guidance document on Annex II", being an agreed interpretation prepared by the TAC working group, should be followed. This document interprets "have to be removed" and modifies the Annex II entries in an acceptable way and short-term fixes the shortcomings of this frequently criticized Annex.

#### **Option 3**

EICTA does not support the continuation of Annex II, specifying detailed treatment requirements. Too detailed regulation slows down the development of recovery / recycling practices and technologies.

## EICTA MEMBERSHIP

### About EICTA:

EICTA, founded in 1999 is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 59 major multinational companies and 41 national associations from 29 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

### The membership of EICTA:

#### Company Members:

Adobe, Agilent, Alcatel-Lucent, AMD, Apple, Bang & Olufsen, Brother, Canon, Cisco, Corning, Dell, EADS, Elcoteq, Epson, Ericsson, Fujitsu, Hitachi, HP, IBM, Infineon, Ingram Micro, Intel, JVC, Kenwood, Kodak, Konica Minolta, Lexmark, LG Electronics, Micronas, Microsoft, Motorola, NEC, Nokia, Nokia Siemens Networks, Nortel, NXP, Océ, Oki, Oracle, Panasonic, Philips, Pioneer, Qualcomm, Research In Motion, Samsung, Sanyo, SAP, Sharp, Siemens, Sony, Sony Ericsson, STMicroelectronics, Sun Microsystems, Texas Instruments, Thales, Thomson, Toshiba, UMC, Xerox.

#### National Trade Associations:

**Austria:** FEEL; **Belarus:** INFOPARK; **Belgium:** AGORIA; **Bulgaria:** BAIT; **Cyprus:** CITEA; **Czech Republic:** ASE, SPIS; **Denmark:** ITEK, IT-Branchen; **Estonia:** ITL; **Finland:** FFTI; **France:** ALLIANCE TICS, SIMAVELEC; **Germany:** BITKOM, ZVEI; **Greece:** SEPE; **Hungary:** IVSZ; **Ireland:** ICT Ireland; **Italy:** ANIE, AITech-ASSINFORM; **Latvia:** LIKTA; **Lithuania:** INFOBALT; **Malta:** ITTS; **Netherlands:** ICT-Office, FIAR; **Norway:** ABELIA, IKT Norge; **Poland:** KIGeIT, PIIT; **Slovakia:** ITAS; **Slovenia:** GZS; **Spain:** AETIC, ASIMELEC; **Sweden:** IT Företagen; **Switzerland:** SWICO, SWISSMEM; **Turkey:** ECID, TESID, TÜBISAD; **Ukraine:** IT Ukraine; **United Kingdom:** INTELLECT.