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Comments on the draft study from Eunomia to support the preparation of EC Guidance for EPR schemes

Summary

This document provides the views and comments from APPLiA and its members on the draft study report from Eunomia (version of the 7th December 2019) to support the preparation of the Commission's Guidance for Extended Producer Responsibility (EPR) schemes.

1. APPLiA's comments on the potential criteria for modulation

As an opening statement, APPLiA would like to highlight that we have concerns that the modulation-fee could represent a useful tool, as long as it is strictly linked to the actual treatment-costs of WEEE and not to the sales-price of products placed on the market.

In addition, it has to be considered that the implementation of the core criteria will be different in each Member State. For example, in Germany, a private contract is established between the individual manufacturer or Consortia, and a waste handler. Whereas, in other countries, the system consists of existing (competitive) collective schemes. In order to ensure that the eco modulation targets environmental product characteristics, which can be influenced by the manufacturer, we emphasise that the modulation system should be linked to treatment costs only, not to logistic and overhead costs. The latter costs are *de facto* driven by cost efficiency measures of manufacturers or the Producer Responsibility Organisations (PROs).

When reviewing Eunomia's study, we felt it would be essential to highlight a key set of questions:

- Which fees are Eunomia assessing to be modulated - the fees paid from the manufacturers and PROs to recyclers or some other kind of fee? It would be essential to clarify the types of fees Eunomia is proposing to modulate and, afterwards, their composition would need to be defined before fixing any modulation criteria.
- Is it expected that the fees will be based on products that are still on the market? This is an important question to address as we believe that manufacturers of long-lasting products may be punished instead of being rewarded. The fee paid at the time of placing a product on the market may be different from its actual waste treatment costs many years later.



- How waste operators would be able to assess if any of the core criteria as proposed by Eunomia are fulfilled or not? Further, what would be the incentive of an end-of-life operator to assess whether the core criteria are fulfilled or not, when it would lead to lower fees and lower income?
- Would the requirements be based on standards (not just in the technical sense) and, if so, which standards?
- Is it the intention of the Commission to shift the burden of ensuring the level playing field from Market Surveillance authorities towards the private sector?

In addition to raising these more general questions, we would like to draw your attention to our comments on Section 4.4 of the final recommendations from Eunomia on a modulation-fee structure for the Electrical and Electronic Equipment (EEE) sector. Eunomia highlighted five potential criteria for the modulation-fee structure. We have addressed each one in our more specific comments below.

1.1 Disassembly, Repair & Upgrade

We welcome the reference to the existing Ecodesign implementing regulations covering several key home appliance product groups, including washing machines, washer-dryers, dishwashers, and refrigerators. These regulations support the ecodesign improvement of appliances through appropriate measures including requirements for reparability and recyclability that contribute to circular economy objectives by improving the lifespan, maintenance, re-use, upgrade, and waste handling of such products.

With respect to the suggestion regarding this criterion's implementation phase, APPLiA believes that the list of spare parts corresponding to a product group should be defined at EU-level, and not at national level. This would avoid Member States defining diverging sets of key spare parts that would disrupt the Single Market. Hence, we strongly believe that defined lists of key spare parts should be harmonised across the EU.

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- *Disassembly and reassembly requirements – namely that, to obtain a bonus the product should:*
 - *Allow key spare parts (to be defined by the MS under each product category) to be replaced with the use of commonly available tools and without permanent damage to the appliance, by repair professionals (either authorised by the OEM /retailer or independent).*

1.2 Cost of spare parts and availability

Eunomia's consideration of modulation based on spare parts cost:

- *The extent to which the price of spare parts might be considered 'reasonable' (of key importance for independent repairers) – while the parts may be available, they may not be commercially viable to use in the context of a repair outside of warranty;*

The availability and the price of spare parts are not part of the contract between EEE manufacturers and WEEE handlers or between manufacturers and collective schemes.



The term 'reasonable' is not defined by Eunomia in the draft study. Therefore, we have concern on how this concept would actually be defined. Indeed, in order to define 'reasonable', several key and technical questions need to be first considered and addressed:

- *What would be a reasonable cost for a spare part, taking into account the price for the respective new appliance when put on the market?*
- *What would be the 'base price' of a spare part to calculate the ratio for the modulation-fee?*
- *How would the modulation-fee based on this criterion consider the price-elasticity of a product across time/in the market?*
- *How would the criterion determine the reference of the cost of a unique spare-part for a product, e.g. calculate an average cost of all available spare parts for that product?*
- *Other? – likely a non-exhaustive list..*

The establishment of a 'reasonable' spare part price is challenging, if not unfeasible. For each and every product, there are a wide range of diverse spare parts available at varying prices.

Regarding the proposal from Eunomia on the availability of digital files for 3D printing of spare parts, we would like to highlight to the Commission the limits of the use of such printed parts in home appliances. Indeed, even if this proposal is an innovative idea from a theoretical point of view, practically it cannot be implemented as printed spare parts do not fulfil the technical requirements (e.g. safety, quality, and dimensional-wise) to match moulded original parts. Therefore, the availability of digital files for 3D printing of spare parts does not ensure having appropriate replicated operational spare parts.

APPLiA believes that the 3D-printing of spare parts proposal does not bring any added value to the modulation-fee structure. Currently, suppliers and/or manufacturers of spare parts can meet the requirement of availability of such parts during a sufficient amount of time specifically set under each product's accompanying Ecodesign regulation (e.g. 7 years for refrigerators, 10 years for washing machines and dishwashers).

1.3 Durability and Warranty period

We strongly believe that the proposal from Eunomia to use the commercial guarantee period of a product as a proxy for its durability is neither appropriate, nor rational for the purpose of setting a modulation-fee structure for EEE. This criterion fails to consider the factual 'durability' measurement of products.

There is no such thing as a product 'free warranty'. There is a legal guarantee (e.g. ranging between 2-5 years in Europe), and in addition, manufacturers and retailers can offer a commercial guarantee. Moreover, the Consumer Rights Directive (2011/83/EU) defines 'commercial guarantee' as any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract.



In this context, neither the content, nor the costs for any type of commercial guarantee are related to the longevity of products. Thus, if manufacturers would be incentivised to offer free-service contracts to customers, as suggested by Eunomia, they will have to offset these costs through other means, such as increases in sales prices.

Therefore, the different bonus levels elaborated in Eunomia's proposal to implement this criterion, as well as its accompanying mandatory labelling provision including the indication of the cost of the appliance per year of 'free warranty' as a price-signal to consumers, are neither suitable, nor in-line with experts' clarifications of 'durability' of Energy-related Products (ErPs) as laid down in prEN 45552:2019¹. The 'durability' concept defines the ability of a part or a product to function as required, under defined conditions of use, maintenance and repair, until a limiting state is reached.

Reaching the end of a product's commercial guarantee period does not mean that the product would no longer have any financial value, as implied by Eunomia's approach. Further, the mandatory label would also be misleading stemming from the fact that it seems to completely ignore the period of a product's legal guarantee.

We would therefore recommend that in the EEE section of the upcoming Guidance on EPR schemes, the Commission should not reference the terms 'durability' and 'commercial guarantee' as suggested by Eunomia, but rather in line with the existing legislation and standards (prEN 45552:2019). Also, we recommend abstaining from implementing mandatory 'durability' labelling prior addressing and resolving these mentioned concerns.

1.4 Recycled content

As we strongly believe that eco-modulation of fees should only be linked to the end-of-life treatment costs of currently arising WEEE, we would recommend the Commission to refrain from identifying 'recycled content' as one of the core criteria for the modulation structure. There would be other ways such as R&D investments, subsidies, tax incentives, etc., to foster the use of recycled materials. The waste fee is definitely the wrong lever for addressing this.

1.5 Hazardous substances

APPLiA recommends that the management of hazardous substances in materials and articles is dealt solely through the well-established EU chemical legislation framework, including the REACH Regulation (EC) 1907/2006, the POP Regulation (EU) 2019/1021, and for the EEE sector in particular, via the WEEE Directive 2012/19/EU and the RoHS II Directive 2011/65/EU.

This framework already implements appropriate measures to prevent and substantially lower the presence of hazardous substances in products, as well as to promote the collection and recycling of EEE. Since their inception, they have been revised and updated, demonstrating their strength as the appropriate tools to regulate chemicals in Europe. They should continue to be the central means to manage hazardous substances in materials and articles in Europe.

¹ "General method for the assessment of the durability of Energy-related Products (ErPs)" as developed by CEN-CLC/JTC 10, prEN 45552:2019.



Furthermore, chemical legislation is constantly evolving e.g. the REACH Candidate List of substances is updated every 6 months. Therefore, the implementation of such a criterion would have a limited impact on the design of home appliances, and therefore, also on their end-of-life treatment processes.

Lastly, the criterion would simply not fit with the progressive recycling of hydrofluorocarbons (HFCs) for their further use in certain HVAC household equipment (e.g. air conditioners), as they would be considered as hazardous.

2. APPLiA's further recommendations for the Guidance

As already mentioned at the beginning of this position paper, APPLiA doubts that the modulation-fee could represent a useful tool, unless it is strictly linked to the treatment costs of WEEE.

When defining any eco modulation system for WEEE, we need to bear in mind that these systems should be enforceable, meaning that the criteria should be able to be verified and controlled by Market Surveillance authorities, and not only taken as a theoretical aspect (i.e. the system should be implementable and controllable on the market).

It is important to highlight again that many EEE products, particularly home appliances, have a relatively long lifetime and, therefore, there is often a period of many years between the placing on the market of the EEE and the time when it comes back as WEEE. The eco modulation system should consider this to ensure that it would be designed in a way to be an incentive – appreciating both the potential treatment costs and the revenues.

Most Member States have already implemented the so-called “pay-as-you-go” principle, i.e. manufacturers do not pay for waste handling of products that are currently sold (and will come back in x years) but pay for current waste management. Modulating fees in this particular system would not make sense, as manufacturers would not be incentivised to use such a set of criteria as proposed by Eunomia, and further receive its real related bonus many years later, in particular when dealing with very long-lasting products.

If the eco modulation fee is combined with the pay-as-you-go principle, producers of long-lasting products will be punished and discriminated. Producers of longer-lasting products would have to pay for a longer period than a producer of appliances with a shorter lifespan, before receiving a return of their efforts.

Collection, logistics and sorting costs are independent from the eco-friendliness of appliances. Treatment of WEEE is not always a cost but can also bring revenues. It also needs to be analysed what is the modulation potential (in €) of the applicable fee, and whether that would lead to an incentivisation of the producers. It needs to be carefully assessed what will be the effect of the spread of the modulation (in €) on the actual fees, when its basis is different from the treatment costs/revenues only.

In case the basis for the differentiation of the existing fee would be different than the treatment costs (e.g. a % of the recommended retail price), this could lead to strange effects.



Let's take an example based on Recupel (BE compliance scheme) fees:

Visible fee for a fridge: 10 €

Eco-modulation of the fee as a + or - on that fee of (e.g.) 10% of the recommended retail price (which could be a real incentive for producers)

RRP of an appliance: 500 € (10% = 50 €)

A malus would mean: fee = 10€ + 50€ = 60€

A bonus would mean: fee = 10€ - 50€ = -40€ => this would mean that the system would have to pay back the producer 40€, where the recycling of the appliance would still be a cost

Long lasting, repairable products reduce the flow of input materials that waste operators depend on, driving up their costs (in particular overhead, depreciation of assets, etc). Waste handlers would have to lower their revenues for something that does not create value for them, which is contrary to a market logic.

In general, the future EPR-guidance should be based on a market driven and economical approach. Based on the new Circular Economy Action Plan, new business models will be encouraged. Therefore, the Commission should include sufficient room and flexibility to continue to drive producers' innovation to cover these challenges and avoid potential barriers. The suggested criteria by Eunomia are not appropriate to strengthen a sustainable long-term approach. Several WEEE-streams contain a lot of valuable materials representing part of the producers' revenues, and for which more flexible and harmonised end-of-waste criteria are required.

We would like to understand better if the Commission intends to undertake an analysis of the modulation-fee structure with respect to the different proposed criteria for the EEE sector, prior publishing its Guidance on EPR schemes. There are different and well-established EPR schemes across Europe. It would seem unfeasible from our point of view to implement a single modulation-fee system effectively.

We remain at your disposal to discuss the recommendations we have raised above. APPLiA is committed to provide the Commission with our experience and expertise to support its preparation of the future guidance on EPR schemes.

APPLiA - Home Appliance Europe represents home appliance manufacturers from across Europe. By promoting innovative, sustainable policies and solutions for EU homes, APPLiA has helped build the sector into an economic powerhouse, with an annual turnover of EUR 44 billion, investing over EUR 1.4 billion in R&D activities and creating nearly 1 million jobs.

