

Bld. Brand Whitlock 114 / B-1200 Brussels  
T: +32 2 738 78 10

**Naomi Marc**  
naomi.marc@applia-europe.eu



## **Advocacy Briefing Document** **Eco-modulation of WEEE fees** **& EPR Guidance**

### **Context**

The home appliances industry has experience with extended producer responsibility (EPR) for over 15 years. EPR for electronic waste was introduced with the WEEE Directive (2002) and further developed within the revised WEEE Directive (2012). According to the WEEE Directive, producers can fulfil their obligations individually or collectively. Today, most EPR is fulfilled through collective compliance schemes.

Article 8a(4)(b) of the Waste Framework Directive requires that, in the case of collective fulfilment of EPR obligations that fees are modulated, where possible, for individual products or groups of similar products, notably taking into account their durability, reparability, re-usability and recyclability and the presence of hazardous substances, and where available based on harmonised criteria in order to ensure a smooth functioning of the internal market. It is expected that by the end of the year, the European Commission will publish guidelines on the modulation of fees of producers of products to EPR schemes to assist Member States in the implementation of the Waste Framework Directive and most specifically Article 8a(4)(b).

According to Article 8a(7), Member States shall take measures to ensure that EPR schemes that have been established before 4 July 2018, comply with Article 8a by 5 January 2023.

In view of the future implementation of this Article, the European Commission assigned the consultant Eunomia to conduct a "Study to Support Preparation of the Commission's Guidance for Extended Producer Responsibility Schemes"<sup>1</sup> which was final and published in April 2020. Indeed, as explained in the study, "in the absence of appropriate guidance, there is a risk that elements of Article 8a are implemented in divergent ways across Member States"<sup>2</sup>.

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<sup>1</sup> EUNOMIA, "[Study to Support Preparation of the Commission's Guidance for Extended Producer Responsibility Schemes](#)", 27 April 2020.

<sup>2</sup> Eunomia study, p. 2.

Therefore, this Guidance aims to support the implementation of these new requirements based on an harmonised interpretation and application across the European Union.

## Criteria and recommendations

The Eunomia's study provides a dedicated section to electrical and electronic equipment<sup>3</sup> where potential criteria for modulation are laid down. Those refer to (i) disassemble, repair and upgrade, (ii) spare parts availability and cost, (iii) durability and warranty period, (iv) recycled content and (v) hazardous substances. When looking at these criteria in combination with Circular Economy objectives, the study developed the following explanations and which APPLiA addressed several concerns:

*(i) Disassembly, repair & upgrade is a key priority since it cuts across various aspects of CE. Hence Member States should modulate on this aspect, where minimum Ecodesign requirements do not already exist through Implementing Regulations.*

APPLiA welcomes 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 requirement for reparability and recyclability that contribute to CE objectives by improving lifespan, maintenance, re-use, upgrade and waste handling of such products.

*(ii) Spare parts' availability, the need to determine a 'reasonable' cost and as well the availability of free digital files for 3D printable spare parts outside of warranty. The availability of physical spares, where minimum Ecodesign requirements do not already exist through Implementing Regulations should also be used as a criterion.*

APPLiA believes that the list of spare parts corresponding to a product group should be defined at EU level and not at the national one. This would avoid Member States defining diverging sets of key spare parts that would disrupt the Single Market.

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. Also, the term 'reasonable' is not defined and several key and technical questions need to be first considered to define a cost.

Finally, we highlighted the limit of the use of 3D printable spare parts in home appliances. 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 to match molded original parts. This issue is covered by APPLiA Position Paper regarding 3D-printed spare parts of June 2020<sup>4</sup>.

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<sup>3</sup> Eunomia study, p. 55.

<sup>4</sup> APPLiA, "APPLiA position regarding 3D-printed spare parts", 12 June 2020.

*(iii) Durability and warranty period which is a combination and acting as a proxy to support CE objectives, would increase the attractiveness of such approaches with a bonus helping to offset any additional cost for producers.*

APPLiA believes that the use of commercial guarantee of a product as a proxy for durability is inappropriate. Neither the content, nor the costs for any type of commercial guarantee are related to the longevity of a product.

*(iv) Recycled content in plastic parts to better drive markets for waste plastics.*

APPLiA strongly believes that eco-modulation of fees should only be linked to the end-of-life treatment costs of currently arising WEEE. We would refrain of using 'recycled content' as a criterion for the modulation structure.

*(v) Removal of hazardous substances as a criterion to drive reduced use of them to an extent greater than that required under RoHS.*

APPLiA recommends that the management of hazardous substances in materials and articles is dealt solely through the well-established EU chemical legislation framework including 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.

APPLiA further addressed its first concerns regarding the potential criteria for the modulation-fee structure in its position paper of 21 April 2020<sup>5</sup>.

## **APPLiA key principles**

APPLiA provided a thorough position paper which developed further on each point mentioned above on each criterion. However, we believe that differentiated costs as a tool to cover end-of-life costs of products and compensate the efforts of manufacturers addressing the end-of-life aspects of their products could be problematic to implement and enforce. In order to determine if it is possible to create a fair, transparent and effective system, the criteria on which the costs could be modulated, will have to be carefully considered and should consider key principles<sup>6</sup> which we developed for the home appliances sector.

Being the main principle, APPLiA would like to emphasise that we do acknowledge that a modulation of fees could represent a useful tool as long as it is strictly linked to the actual treatment-costs of WEEE and not to the sales prices 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. The structure of the fee should be harmonised at the European level and applied consistently across the EU to avoid the risk of a distortion of the market. By consequence, all criteria must be measurable and enforceable. Indeed, measurement methods, ideally established at European level, should exist for any criteria to be used. As

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<sup>5</sup> APPLiA, "Comments on the draft study from Eunomia to support the preparation of EC Guidance for EPR schemes", 21 April 2020.

<sup>6</sup> APPLiA developed a list of key principles which gathers some elements already mentioned above in addition to others in view of providing a clear guidance when developing our position in future activities.

well, the criteria should be enforceable at the time the product is placed on the market, when they can be inspected and verified.

Furthermore, APPLiA already required that an impact assessment and a consultation of relevant stakeholders of the sectors shall be developed. This is a crucial step for assessing the real impacts of a modulation system as well as its capability to lead towards actual incentives for both manufacturers to adapt the design of their products, and to consumers to alter their purchasing decision.

## **Next steps and advocacy strategy**

Eunomia finalised its study in April 2020 and provided its recommendations to the European Commission regarding the future Guidance towards Member States.

Consultations between the European Commission and Member States already took place where a first draft Guidance was discussed in which the recommended criteria by the consultant are exposed with the same rationale behind. Based on the latest information by the European Commission on the state-of-play of the consultation' process, comments provided by the Member States are now consolidated by the European Commission for a final report to be expected soon.

As the Member States are entering into the transposition phase of Article 8a requirements from the Waste Framework Directive, APPLiA would like to reiterate, once more and through its national network, the home appliances industry's position regarding the feasibility of implementing such a modulation system based on criteria which are not appropriate to strengthen a sustainable long-term approach. Indeed, without a proper analysis of the modulation-fee structure with respect to the different proposed criteria for the EEE sector done prior the final publication of its Guidance on EPR schemes, we fear that it will constitute a barrier to the Single Market. There are different and well-established EPR schemes across Europe and it would seem unfeasible, from our point of view, to implement a single modulation-fee system effectively.