

Case study: European Governance and Waste of Electrical and Electronic management

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ABSTRACT

This paper analyzes the writing up and approval process of the European Union Directive on waste from electrical and electronic equipment (WEEE). This analysis shows that European Union faces many challenges in its policy-making processes. Not all stakeholders affected by the European directive have the same chances to introduce their points of view. Lobbying system although has some intrinsic non-democratic roots is able to affect the final directive. This paper pays special attention to the quality and transparency of the approval process, and contains a study of some of the environmental, and economic consequences of the governance process problem.

Keywords: governance, policy-making, European Directives, electrical and electronic equipment, waste management, stakeholders, participation in decision, lobbying.

1. INTRODUCTION

There has been an important increase of the environmental concern in the last decades in western societies. This fact has lead public administrations to promote new environmental legislation. These regulations have strong implications on the economic and social level, and therefore in their approval process different institutions and stakeholders are involved.

One of the main points that have been addressed by the EU regards the management of different types of waste. In the 18th of December 2002 a Directive on waste of electrical and electronic equipment (WEEE directive) was passed. This directive has strong consequences on many different fields, such as the use of natural resources or the dispersion of pollutants into the environment, but also on the economic cost for the electrical and electronic industry, the opportunities for the recycling industry and the reusing sectors, etc. Therefore several sectors have been involved in the elaboration of this regulations, lobbying throughout the decision process.

On the other hand, there is a sense within the European Union that it lacks, as an institution, of transparency and effective channels of participation, during the policy-making process.

Many European citizens consider the EU structure and its legislation processes complex and non-efficient, and do not feel the EU institutions acting as an effective channel for their views and concerns. This fact has induced the EU as an institution, politicians, universities and social organizations, to an increasing concern on the EU governance.

As a response to this fact, the EU has prepared the “White paper on European Governance” (White Paper, hereafter) (1). The White Paper develops the concept of governance and proposes some improvements for policy-making processes. Many other documents have been set (or are in preparation). In this paper we will just focus on the document “Consultation document: towards a reinforced culture of consultation and dialogue- proposal for general principles and minimum standards for consultation of interested parties by the commission “ (Consultation document, hereafter) (2) prepared by the EU Commission.

In this paper, we present the case of the WEEE directive as an example for discussing the issues related to EU governance raised in both documents.

The structure of the paper is as follows. Section 2 presents the WEEE environmental problem and the approved directives. Section 3 presents the stakeholders that have been involved in the approval process. Section 4 presents the response of ecological and electric and electronical lobbies to the *White Paper* and the *Consultation document*. Section 5 presents the main discussion points that were raised during the directive approval process and the position of each stakeholder. Section 6 discusses the main differences between recommendations established in the governance “official discourse” and the approval process of WEEE directive. When possible, the ecological and economic impact of this difference is attempted to be established. An analysis of the lobbying system and the different successes they achieved is also done. Section 7 draws some conclusions and recommends key lines for improving governance. Finally, in Annex 1 a summary of the Commission first draft position, the response of all the involved stakeholders and the final directive text can be found.

2. EUROPEAN WEEE DIRECTIVES

2.1. Environmental impact of European WEEE

The waste stream of electrical and electronic equipment has been identified as one of the fastest growing waste streams in the European Union, constituting 4% of the municipal waste today, and increasing by 16-28% every five years - three times as fast as the growth of average municipal waste. Furthermore, it is one of the largest known sources of heavy metals and organic pollutants in the municipal waste. With a view to the resource intensive production of electrical and electronic equipment, the requirement to recycle this waste will lead to significant resource savings.

Today's generation of WEEE in the European Union is near 6 million tones per year.

Due to WEEE composition, a separate collection is the precondition to ensure specific treatment and recycling of WEEE. This will allow not only their proper treatment, but with their segregation all the remaining urban waste could also be better managed.

Environmental impacts are produced at each stage of the product life. Impacts are produced by its use, by its design (quantity of materials, energetic use) and by its way of disposal at the end of life. In this final step, when the product is introduced in the waste flow, its impact not only depends on the properties of the product but also on the treatment that is done. A complete life-cycle analysis should be performed to understand the full set

of produced impacts, but whilst they are further developed, re-use and material recovery should be considered preferable insofar they are the best environmental option.

Due to the waste management systems that are now in place, near 90 % of WEEE end up in landfills or incinerators.

2.2. EU institutions concern about WEEE environmental damage

EU institutions concern about WEEE starts a long time ago.

The EU Council, in its Resolution of 7th May 1990 (3) on Waste Management Policy, invited the Commission to establish action programs for particular types of waste. Member States identified, *inter alia*, end-of-life electrical and electronic equipment as a waste stream to be addressed in this respect.

The European Parliament, in its Resolution of 14th November 1996 (4), asked the Commission to present proposals for directives on a number of priority waste streams, including electrical and electronic waste, and to base such proposals on the principle of producer responsibility.

The Council, in its Resolution of 24th February 1997 (5) on a Community strategy for waste management, invited the Commission to develop, as soon as possible, an appropriate follow-up to the initiative on waste electrical and electronic equipment.

European concern about its ecological impact has led the Council and the Parliament to implement new Directives. A first draft was presented by the European Commission in June 2000.

As it is established in the Annex II of the WEEE European Directive, some business consultations were carried out in the period 1994-1999 before the first draft of the directive was produced. Some NGOs were consulted as well.

2.3. WEEE directives

The proposal of the *Directive on Waste of electrical and electronic equipment* establishes measures on the prevention of waste from electrical and electronic equipment, on the collection of electrical and electronic equipment as well as their treatment, recycling and recovery. It is proposed that Member States set up separate collection of WEEE and ensure the proper treatment, recovery and disposal of WEEE. The treatment, recovery and disposal of WEEE will be financed by producers to create economic incentives to adapt the design of electrical and electronic equipment to the prerequisites of sound waste management. Consumers will have the possibility to return their old equipment free of charge. Quantified targets for recycling and recovery are set out.

The proposed *Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS)*, introduces a substitution requirement for those substances in electrical and electronic equipment, which pose the main environmental problems during disposal and recycling of such waste. The aim of this Directive is to support the ongoing efforts to substitute these substances by less harmful ones. The

targeted substances include heavy metals such as lead, mercury, cadmium and hexavalent chromium.

We will focus our attention on the *Electrical and Electronic Equipment Directive*, which was negotiated and approved together with the *Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment*.

2.4. Directive on electrical and electronic equipment approval procedure

The Codecision procedure was established in the Art. 251 of the Maastricht EU Treaty ¹. In this procedure, the Parliament shares the legislative power with the Council of Ministers. The Codecision procedure can comprise up to three readings in the Parliament and in the Council and requires a Conciliation Committee in the event of disagreement between the two institutions. The Committee is composed of the members of the Council or their representatives and as many representatives of Parliament. The Commission is involved and takes all the necessary initiatives.

Codecision procedure has been used in the Directive on Electrical and Electronic Equipment. Conciliation Committee was required because of the disagreement between the Parliament and the Council. Thirty months were needed to pass the directive (7).

3. STAKEHOLDERS

A range of groups affected by the *Directive on electrical and electronic equipment* can be identified. The main groups are: European citizens (who will be forced to separate WEEE), electric and electrical industry (who will be responsible of financing the management system), recycling and reusing organizations, environmental groups and retailers. Nevertheless not all of them had the same chance to participate in the directive redaction.

The directive first draft of a Directive is done by the European Commission (whose members are elected by National States). Its approval is shared by the European Parliament elected directly by the European citizens) and the European Council (constituted by the National ministers). Any other actors can not directly introduce amendments and/or refuse the directive, but they tried to influence the institutions that can do so.

In this directive mainly five lobbies at European level have been in action.

- CECED (European Committee of Domestic Equipment Manufacturers) (8). Represents almost all the European manufacturers and National Trade Associations, with over 200,000 employees directly and it has a turnover of about 35 billion euro.
- EICTA (European Information, Communications and Consumer Electronics Technology Industry Associations) (9). It combines 28 national ICT/CE associations from 18 European countries with 44 direct company members. EICTA represents more than 10,000 enterprises in Europe with more than 1.5 million employees.

¹ A complete explanation of the Codecision procedure can be found in Eurolex (6).

- ORGALIME (10), a lobby constituted by more than 31 member trade federations who represent some 100,000 companies in 21 European Countries and covers metalworking, mechanical engineering, electrical and electronic engineering fields
- EEB (European Environmental Bureau) (11), a lobby of non-governmental organizations constituted by 134 environmental NGO's from 25 countries
- RREUSE (European Network of Social Economic Enterprises with activities in Re-use and Recycling)

Some big manufacturing companies, Electrolux for example, have been also lobbying by themselves.

National Trade Associations and manufacturing companies have done national lobbying. The action of national lobbying is not analysed in this paper.

4. EUROPEAN GOVERNANCE

The White Paper on European Governance defines Governances as: “rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence” (1). These five features are known as the five principles of European Governance

We will just make reference to some of the reactions to both the *White Paper* and the Commission *Consultation document* of the main lobbies that have been involved in the WEEE directive. More precisely, we will just analyse those aspects that shall be used later because of their influence on the evolution of the WEEE directive.

4.1 Response by the Electrical and Electronic Industry sector (EEIS): CECED, EICTA and ORGALIME to the White Paper and to the Commission document.

EEIS stresses the importance of being sure that EU regulatory action is essential before beginning any legislative process. As a general rule EICTA considers that minimum regulation (freedom from mandatory rules and standards on their products and services that go beyond ensuring the health and safety of consumers, or that go beyond what is necessary for preserving the Single Market), is their preferred framework (12).

If any measure must be taken, EEIS defends the importance of applying other methods of governance different to regulation. They stress the importance of non binding tools such as recommendations, guidelines and self-regulation to achieve defined policy objectives. They clearly favour the development of voluntary agreements (12,13,14), and remark that technology could be a part of the solution if problems were properly identified (12).

They consider that political authorities should determine which objectives are to be pursued and which should be the (long-term) time horizon to reach them. Stakeholders should take part in the debate that would further clarify the objectives, but politicians should take the final decision. Specific targets and means, on the other hand, would be the domain of industry, even though other stakeholders could give their comments. In any case, politicians would have the last say in either accepting or not the industry initiative as responding to the political objective (14).

In the framework of voluntary agreements, EEIS has good experience with the work of the regulatory committees consisting of national experts (which is known as comitology process).

In relation with the Commission *Consultation document*, EEIS considers that workshops between a limited number of experts often prove to be most productive, than larger showcase consultation meetings. In the same, Orgalime cautions the Commission against launching blanket consultations before defining, in consultation with targeted stakeholders, the policy objectives to be achieved and the outlines of regulatory initiatives proposed (13).

EEIS considers very important to carry out regular consultations with industry in the earliest stages of the process. In this sense they are in favour of “partnerships arrangements”.

Introduction of large-scale proposals should be based on objective and transparent risk assessment and business impact assessment before a decision is taken to proceed. They consider that this has not been the case in the WEEE and RoHS, which were not preceded by such an analysis (14).

4.2 Response by European Environmental Bureau to the White Paper and the Commission Consultation document.

The EEB has shown a great interest in the European governance for a long time (15,16,17) and endorses all five principles of the *White Paper*.

In reference to the comitology process, EEB has some doubts on the changes proposed by the Commission. The Commission wants to restrict/re-formulate the Member States' role to a purely legislative and control role over the Commission as executive body. But it is not clear which will be the impacts of the proposed changes on the comitology procedure in relation to environmental legislation.

EEB is critical with the concept of co-regulation because they consider that an increased use of this kind of agreements will relieve the pressure on governments to strengthen their regulatory bodies, whereas such bodies are necessary for effective environmental policies and to level playing fields in the Community.

EEB considers that co-operation rather than prescription may mean excessive freedom of manoeuvre for businesses without a corresponding advantage in terms of environmental protection, less ability for the public to insist on the environmental aspect of result-oriented policies, and a marginal role of public authorities in managing sustainable development. It also may lead to increasing differences in performance throughout the Union.

On the other hand, it is important to note that EEB considers that it is not clear whether the Economic and Social Committee (ESC) represents “civil society” as it is suggested in the *White Paper* – since the social partners dominate it. EEB proposes that “civil society” must be separated from “social partners” (employers' and employees' organizations).

In reference to the *Consultation document* (2) EEB position is (18):

- Minimum Standards should be binding
- Principles and standards for consultation should not only be established as tools for the Commission. They should also recognize the right of citizens to know how public authorities are performing their tasks and the right to be listened at moments the citizens and their organizations see as appropriate.
- Consultations should not only be held at one meeting but rather be a part of the whole process
- EEB thinks, together with the Commission, that it is very important to “*reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access [...]*”. They show they are aware that commercial pressure groups have much influence when they are actually acting without a mandate from their customers and employees. To counter this imbalance the Commission needs to bolster its support (including financial) to the NGOs which play a role in the dialogue with Environmental civil society and have less opportunity than businesses and industrial lobbies to mobilize resources for this.

5. MAIN DISCUSSION POINTS

The content of a directive has many discussion issues, some of them with high relevance for their environmental and economic implications. In some of them different points of view were defended by the stakeholders. We will focus our discussion on four issues:

- Which should be the electrical and electronic equipment collection and recovery targets?
- Should specific reusing objectives be incorporated?
- Should collection include household collection? Should producers just pay collection from collection points onwards?
- Who should pay for the collection and treatment of electric and electronic equipment introduced previously to the approval of the directive (i.e. the so-called “historical waste”)? Should producers be allowed to introduce a visible fee to finance historical waste?

Annex 1 presents a summary of the Commission first draft position and the response of the main involved stakeholders: EEB, EICTA, CECED, ORGALIME, Economic and Social Committee, and the Parliament, as well as a summary of the final document. This information can be used to study the relation between initial goals of the different stakeholders and the final results.

6. ANALYSIS

6.1. Normative or non-normative approach on governance

Electrical and Electronic Industry has proposed the ability of free market to establish self organized non-normative systems to solve environmental problems (12,13,14) as a key aspect on governance. But the EU concern on WEEE comes from more than a decade

ago. In this decade non-normative approach has proved to be unable to solve this waste management problem.

Here there is a summary of the economic and environmental costs of this lack of regulation in the last ten years. Considering (19):

- 3% per year growth rate on WEEE
- 90% of WEEE is landfilled, incinerated or recovered without any pre-treatment,
- 6 million tones of WEEE were generated in 1998

A total amount of 60.66 million tones of WEEE have been generated in this decade, 54.6 of which have been landfilled, incinerated or recovered without any pre-treatment.

Considering (19):

- A recovery rate of 25% of total production (which is the level proposed by the Directive, implying a mandatory level of collection of 4 kg collection per capita out of a generation of 16 kg per capita).
- A collection cost of 300 euros/ton and a recycling cost of 295 euros/ton in average

The total avoided cost by the Electrical and Electronic Industry has been 9,023 million euros.

6.2. Commission works previous to the first draft creation

An accurate reading on the Directive and its approval process shows clearly that some of the principles of the Commission *Consultation document* have not been considered in the WEEE directive:

In point D of the *Consultation document "Acknowledgement and Feedback"* it is stated that:

"... In particular, explanatory memoranda accompanying legislative proposals by the Commission will include the results of prior consultation processes as well as an explanation on how these have been carried out and how the results have been taken into account in the proposal. In addition, the results of consultations carried out in the Impact Assessment process will be summarized in the related reports."

In this Directive some information is available in point 12 "*Consultation of Stakeholders*" and in Annex II. However, two main problems are detected. First, there is not a complete list of the other stakeholders consulted; only industry information is available. Second, it is not clear which are the results of consultations. In some documents of EEB (20) it is explicitly set that results of discussion on WEEE are clearly different to the ones used in the first Commission Draft.

In point E of the *Consultation document "Specific elements for focused consultations"* it is stated that:

"Where the Commission carries out focused consultation procedures, the Commission should ensure that relevant parties have an opportunity to express their opinions."

In order to ensure equitable treatment, the Commission should ensure an adequate coverage of the following parties in the focused consultation process:

- *those affected by the policy*
- *those who will be involved in the implementation of the policy, or*
- *bodies that have stated objectives giving them a direct interest in the policy.”*

However, in the directive it is clear that ecologist groups and reusing businesses have been consulted, but there is no information on reusing organizations. Due to their impact on reducing the environmental impact, they should have been considered as a relevant party, and information on their particular role should have been included.

6.3. Approval directive period

The time period of the Directive approval process has been from 13/6/2000 to 18/12/2002, 30 months. Considering that the White Paper proposes as a target a period of 6 to 9 months for the approval or deny of any directive the extra time of this directive is 21 months. In this period 3 million tones of WEEE have not been collected and treated (19). This means that due to this delay the Industry has not internalized a cost between 600 to 1,200 million euro (19) due to the direct cost of the waste management system, while the whole society has continued receiving the environmental impact.

A second effect derived from the long period of the approval directive system can be seen in the recovery targets. With a 3-5 % increasing percentage of WEEE production per year and a fixed value of collection target (4 kg per capita), during the 24 extra months spent in the approval process, the relation between WEEE generation and collection decreased by 6-10%. This “devaluation” of targets, produced by the too long approval process, would occur each time a target is not percentual, whereas the considered variable increases quickly with time (which is a typical behavior of the “new” problems that must be normatively treated). As not always is possible to introduce a target that relate sells and waste production (due to the lack of data, for example) the only way to avoid this problem is to make shorter the approval period.

6.4. Process transparency

Transparency is one of the White Governance Paper principles. In order to achieve this goal a whole set of mechanisms have been developed, such as Eurolex, an Internet database system. Nevertheless, during the approval period of this directive the web updating has been too slow, and information was not available when it was needed if an – online- following up of the process was going to be done. Many examples can be found: for example, the Council Common Position was adopted on 04/12/2001. The document, however, was not still available when Parliament did the Second Reading on 01/04/2002, establishing amends on the Common Position Document. Transmission of documents to on-line services must be much quicker if the White Paper on European Governance targets want to be achieved.

A second very important point of lack of transparency is the Conciliation procedure. No information is available of the meetings and partial meetings and agreements that are achieved. Lack of transparency of the Conciliation procedure has also been acknowledged as an important pitfall in the White Paper. A big improvement should be done in this point, because of the importance of the Conciliation procedure held at the final step of the Codecision procedure. Flexibility of the negotiations should be always followed by the transparency and availability of information.

6.5 Stakeholders capacity to influence in the final directive

In this section we analyse the stakeholders success in introducing their points of view on the main discussion issues of the WEEE directive. In other to have the complete information Annex 1 reading is recommended.

6.5.1. Collection and recovery targets

In reference to the collection target final redaction of the directive (compulsory objective of 4kg inhabitant year) is the same as ESC position and is in the same line as electrical and electronic industry proposals (4 kg inhabitant year but non compulsory). Final collection target is lower than Environmental lobbying and European Parliament position (compulsory objective of 6 kg inhabitant year).

Recovery targets in the final text are very similar to the defended targets by the Environmental lobby. Whereas European Parliament and ESC defends higher levels of recovery, electrical and electronic industrial lobbying consider that the approved levels are almost impossible to achieve, they are very far from their defended position.

6.5.2. Re-using in WEEE directive

In the final redaction of the directive there are no specific targets for re-using, this was the position defended by the electrical and electronic Industry.

All the other stakeholders (recovery organizations, environmental lobbying, the European Parliament and the ESC) defend an introduction of specific targets –or similar strategies-, but their position have been defeated.

Moreover the Directive establishes:

5.4. Member states shall ensure that all WEEE collected under paragraphs 1,2 and 3 above is transported to treatment facilities authorized under Article 6 unless the appliances are re-used as a whole. Member states shall ensure that the envisaged re-use does not lead to a circumvention of this Directive, in particular as regards Article 6 and 7. ...

This means that the entire re-using sector should change their behaviour introducing their structures in the Integrated Management System that will be established. If they do not do it and the collection or recovery target of the System does not reach their objectives, their activity could be forbidden, even if it is environmentally and socially (in terms of job creation) better, as it was recognized in some European Parliament amendments to Commission first draft.

Reusing sector is a crucial stakeholder in this directive because of the importance of their activity nevertheless it has been defeated by lobbying of recycling industry (who are not the same people which is involved in recovery, and which are much more organised as big plant and investments rather than the decentralized organizations that characterise the recovery sector) and by the electrical and electronic industry that opposes second hand market (24).

6.5.3. Household collection

Even though the first draft by the Commission established the obligation of Industry to pay household collection the final redaction is ambiguous, moving in the direction defended by electrical and electronic industry lobbying “producers provide at least for the financing of the collection, the treatment, recovery and environmentally sound disposal of WEEE from private households deposited at the collection facilities, set under article 5(2), onwards”. If we put our attention in “onwards” we can say that governments cannot require producers to finance from households while if we put our attention in “at least” household financing could be included.

As a consequence of this ambiguous redaction final obligation of finance by industry will come true or not depending on each State position in the transposition. Considering that estimated household collection costs would be almost half of the total collection and recovery costs (27), heavy pressure will appear in governments in order not to include the financial responsibility in industry obligations.

Environmental lobbying and the European Parliament defend, in the comments to first draft text, a household collection financed by producers but their position has been defeated.

6.5.4. Historical waste and visible fee

A visible fee has been introduced in the final redaction of the directive in order to cover the costs of historical waste treatment. Electrical and Electronic Industry and ESC defended this position. Consumers will pay directly the visible fee until 2011 (2013 for the equipment on Annex 1A – big electronic equipment). European Parliament defends even a longer period visible fee (10 years instead of 8).

6.6. Post-adoption phase

The complexity of the decision procedure leads to a high ambiguity in the final directive. As a consequence, the influence of post-adoption phase clarifications is important.

A Regulatory Committee helps the Commission draft legislation according to the system known as “comitology”. The created comitology committee fine-tunes certain items of the legislation and could review any item it deems important. Article 13 of the directive stipulates that the Commission will be assisted by a Regulatory Committee which is legally required to review seven articles and annexes of the directive: Recovery (article 7), list of products which shall be taken into account for the purpose of the directive (annex IB), selective treatment for materials and components of WEEE (annex II), technical requirements for treatment facilities (annex III), crossed-out wheeled bin symbol (annex IV) and members states’ information and reporting requirements (article 12). This committee is composed by Member State representatives, and could be easily influenced by some of the lobbies. No clear communication and transparency obligations are established in this period. The fact that comitology committee, a technical committee, is composed by Member State representatives has been criticized in the *White Paper*.

7. CONCLUSIONS

The WEEE example on the approval of a directive shows the limitations and problems of the European Union decision-making process.

We could observe how the approval process has a direct and important influence in environmental, social, financial and logistics aspects.

A quicker response between the detection of the problem and the normative approach would reduce the environmental impact in many cases, as it has been shown here.

The WEEE directive show that decreasing the period between the first draft and the final approved directive is important considering not only the social perception of the effectiveness of the EU governance system but also the environmental and economic impact caused by the delay.

When we consider the first draft elaboration process in WEEE Directive we can see that some work must still be done before the *White Paper* principles of Participation, openness, accountability, effectiveness and coherence could be achieved in the Commission work. One of the main critiques on the Commission *Consultation document* is that neither the general principles nor the minimum standards established in the document are legally binding⁶ and these standards are not extended to all the other institutions involved in a Directive approval process. Since the same principles that are justified in the Commission paper can be applied to the other organisms, it seems reasonable that these principles could be extended.

The capacity to influence on the final redaction of Directives depends on the design of the approval process. The text of WEEE directive (as it is the case for almost all the directives) was affected by lobbying by all the stakeholders. This lobbying is done in a not quite regulated framework, this implies a possible lack of control on the level of influence.

The lobbying system has some intrinsic problems:

- Not all the stakeholders have the same kind of representativeness. While some of them (electrical and electronic business, recycling businesses, environmental NGO's in this case) have direct influence by the specific lobbies teams designed to introduce their point of view in the directives, European citizens have an indirect representation (Members of Parliament) that have not been chosen to defend this specific topic. No direct participatory processes by citizens are usually considered.
- In order to achieve an effective European lobbying process, a huge amount of money is needed, but there is not any control on the money spent. Even though some money is given by the public European funds to NGOs, the funding raising ability of business is much bigger. Since there is no relation between the importance of the different stakeholders and their economic capability, non-democratic changes will happen in the approval process.
- There is a clear difference on the interest in participation in European forums depending on the "culture of stakeholders". While industry is used to participate in these forums, the rest of stakeholders are much less used to or interested. An example of this fact can be the adoption by the Commission of the Green Paper on Integrated Product Policy. This Paper launched a public consultation process on a proposed IPP strategy. The strategy aims at having more environmentally

friendly products on the market. There are two main stakeholders: industry and consumers. 58% of the contributions came from industry, 5% from consumer organizations and 2% from environmental NGOs^b. These figures indicate that even when the intentions of the Commission are good (promoting greater transparency and broader consultation), this does not in itself guarantee balanced feedback (28).

In general terms industry lobby, represented by electrical and electronic industry lobbying has been the most successful in this Directive approval process. On the other hand, the introduction of the directive as a whole has been a great success for environmental lobbying, because it is a clear example of making industry responsible for their waste production.

Some clear differences between ESC and EEB positions could be observed in WEEE directive. This could help to understand reticence of EEB to consider ESC as the “social society” intermediary with the Commission.

Finally, we can conclude that throughout the process, as it is set in the White Paper on European Governance, much more work must be done in order to increase transparency. The existent mechanisms still do not work well enough (Eurolex for instance), and there are some parts of the approval process, such as the Conciliation procedure, without any kind of communication mechanism.

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REFERENCES

- 1) White Paper on European Governance. Brussels, 25.7.2001. COM(2001) 428 final
- 2) Consultation document: towards a reinforced culture of consultation and dialogue – proposal for general principles and minimum standards for consultation of interested parties by the comision .Communication form the Commission, Brussels, 5.6.2002 com(2002) 277 final.
- 3) European Oficial Journal C 122, 18.5.1990.
- 4) A4-0364/96.
- 5) European Oficial Journal C 76, 11.3.1997.
- 6) <http://europa.eu.int/prelex/>
- 7) http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=es&DosId=158020
- 8) <http://www.ceced.org>
- 9) <http://www.eicta.org/Content/Default.asp?>
- 10) <http://www.orgalime.org>

^b 22% from Governments, 8% from individuals, 3% from reasearch/universities, 2% from others

- 11) <http://www.eeb.org>
- 12) EICTA Position on the White Paper on European Governance. Brussels, 10 April 2002.
- 13) Improved impact assessment and consultation of stakeholders: towards quality regulation in the EU. Orgalime Position. 1 October 2002. Orgalime comments on Commission Communications of 5 June 2002.
- 14) Critique of the White Paper on Governance. PP 02-06. Brussels, March 28th 2002.
- 15) EEB annual conference report. Good Governance for the Environment. Annual Conference of the European Environmental Bureau. 27-28 April 2001.
- 16) A First Response from the European Environmental Bureau to the White Paper on Governance. 2001.
- 17) Good Governance for Environment. Annual Conference of the European Environmental Bureau. 27-28 September 2001
- 18) European Environmental Bureau Response to "*Consultation document: towards a reinforced culture of consultation and dialogue – proposal for general principles and minimum standards for consultation of interested parties by the commission. Communication from the Commission, Brussels, 5.6.2002 com(2002) 277 final*".
- 19) Proposal for a Directive of the European Parliament and of the Council on Waste Electrical and Electronic Equipment', (COM(2000) 347 - 2000/0158 (COD)).
- 20) March 2001. Towards-Free electrical and electronic equipment. EEB
- 21) Industry comments 'Jekyll & Hyde' Reports on WEEE & RoHS. Pan/Industry statement on WEEE & RoHS.
- 22) A5-0148/2001. Proposal for a European Parliament and Council directive on waste electrical and electronic equipment (COM(2000) 347 – C5-0414/2000 – 2000/0158(COD)).
- 23) Opinion of the Economic and Social Committee on:
 - the 'Proposal for a Directive of the European Parliament and of the Council on Waste Electrical and Electronic Equipment', and
 - the 'Proposal for a Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment' (2001/C 116/08)
- 24) CECED Position Paper on the RE-USE of appliances and components. June 1999
- 25) ORGALIME / CECED / EACEM / EICTA Joint Statement on results on environmental Committee votes on WEEE and ROHS
- 26) ORGALIME Summary Position of Orgalime's Electrical & Electronic liaison committee (EELC) in Cooperation with European Sector Committees on Commission proposal for directives of the European Parliament and of the Council (CO(2000)347 provisional), dated 13 June 2000 on: Waste electrical and electronic equipment (WEEE) and Restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS).
- 27) Cost implications of WEEE for the household appliance industry. CECED 06/2002
- 28) "GOOD GOVERNANCE AND THE 6 th EAP: REACHING AND INVOLVING THE EU CITIZENS AND THEIR ORGANIZATIONS", by Rolf Annerberg, Head of Cabinet of the Environment Commissioner del text de EEB

ANNEX 1

- **Collection and recovery targets**

Collection target

| Institution | Collection target | Compulsory ? | Date of achievement | Revision of the target |
|------------------------------------|--|--------------|---------------------|------------------------|
| 1st Commission draft (19) | 4 kg per inhabitant per year | Non | 31 December 2005 | 2008 |
| EEB (20) | 6 kg per inhabitant per year | Yes | 31 December 2005 | 2007 |
| CECED, EACEM and EICTA (21) | 4 kg per inhabitant per year | Non | 31 December 2005 | 2008 |
| Parliament (22) | 6 kg per inhabitant per year | Yes | 31 December 2005 | 2008 |
| Economic and Social Committee (23) | (i) changing the proposed soft target into a legally binding one; or increasing the proposed 4 kg rate to a more ambitious level; or advancing the proposed date of 2006; and (iv) introducing a collection target for WEEE from other than private households, for which no such target is proposed | | | |
| Final redaction | 4 kg per inhabitant per year | Yes | 31 December 2006 | 31/12/2008 |

Recovery target

| Institution | category 1 | | categories 2, 4, 6 and 7 | | category 3 | | gas discharge lamps | cathode ray tube | |
|-----------------------------------|--|-------------------|--------------------------|-----|------------|-----|---------------------|------------------|-----|
| | R1 | R2 | R1 | R2 | R1 | R2 | R2 | R1 | R2 |
| 1st Commission draft ⁸ | 80% | 75% | 60% | 50% | 75% | 65% | 80% | 75% | 70% |
| EEB ⁹ | 80% | 75% | 60% | 50% | 75% | 65% | 80% | 75% | 70% |
| EEB ² | 95% ³ | 90% ¹⁸ | 80% | 70% | 95% | 90% | 90% | 75% | 70% |
| CECED, EACEM and EICTA (21) | 80% | 75% | 60% | 50% | 75% | 65% | 80% | 75% | 70% |
| Orgalime ⁴ | Targets are unachievable given the proposed high level of recycling targets. Realistic, measurable and progressive targets should only be set after experience has been gained | | | | | | | | |

² Target to be met in 31st December 2007. Reuse of whole appliances is considered in the proposed reuse/recycling targets. We also suggest that targets should be set for categories 5 (lighting equipment except for gas discharge lamps), 8 (medical equipment systems), 9 (monitoring and control instruments). A minimum recovery target of 70% and reuse/recycling target of 50%, as proposed by the Council, should be reached for those categories by 31st December 2004

³ Categories 1 and 10

⁴ A5-0148/2001. Proposal for a European Parliament and Council directive on waste electrical and electronic equipment (COM(2000) 347 – C5-0414/2000 – 2000/0158(COD))

| Parliament ⁵ | 90% ⁶ | 85% ²² | 70% ⁷ | 60% ²³ | 85% ⁸ | 70% ²⁴ | 85% | 80% | 75% |
|------------------------------------|---|-------------------|------------------|-------------------|------------------|-------------------|-----|------------------------|-----|
| Economic and Social Committee (23) | The ESC advocates ambitious targets for recovery, re-use and recycling. According to the Commission, its proposals in this respect reflect the state of the art of recyclers and do not involve specific extra costs compared to the average recycling costs observed in a number of European pilot projects. This being the case, the question arises as to why the proposed targets only have to be met by 2006 and why they will then remain unchanged until at least 2009 (possibly more ambitious targets are only foreseen for the period 'beyond 2008'). Finally, the Committee would stress that the lack of a separate target for the re-use of WEEE weakens the proposal's re-use objective | | | | | | | | |
| Final redaction | 80 ⁹ | 75 | 70 ¹⁰ | 50 | 75 ¹¹ | 65 | 80 | To be set on 31/12/008 | |

Table 2. R1=Recovery target, R2=Re-use and recycling target

- **Should specific reusing objectives be incorporated in WEEE directive?**

| Institution | |
|----------------------------|---|
| 1rst Commission draft (19) | "re-use" of <u>whole</u> equipments are not considered in reuse/recycling targets. |
| EEB (20) | Nonetheless, the importance of promoting reuse, refurbishment of whole appliances should be acknowledged. With that in mind, the reuse of whole appliances should be included in the targets and reuse/recycling targets should be increased. In case reuse of whole appliances is not incorporated into the targets, it must be ensured that effective collection and monitoring schemes are in place, so that clear priority is given to the refurbishment of whole appliances. The second-hand market will thus be promoted and employment opportunities will be created, benefiting the whole social economy. Examples in the UK show that the reuse/refurbishment target for PCs was reached up to 90%, including the whole appliances being resold or components being reused |

⁵ A5-0148/2001. Proposal for a European Parliament and Council directive on waste electrical and electronic equipment (COM(2000) 347 – C5-0414/2000 – 2000/0158(COD)). For electrical and electronic appliances which offer significant and proven environmental benefits over conventional electrical or electronic appliances with the same or similar functions, e.g. substantially lower consumption of energy, water or other resources, or for radical innovations which allow existing applications to be developed or open up new applications, a recovery rate of 75% of appliance weight shall be laid down by the procedure referred to in Article 14(2).

⁶ Categories 1 and 10

⁷ For WEEE falling under categories 2, 5, 6, 7 and 9 of Annex I A, with the exception of equipment that contains cathode ray tubes

⁸ For WEEE falling under category 3 and 4 of Annex I A, with the exception of equipment that contains cathode ray tubes

⁹ Including category 10

¹⁰ Category 2, 5, 6 and 7

¹¹ Category 3 and 4

| | |
|-----------------|---|
| CECED (24) | <p>It is at least questionable that it is a choice for the environment to prolong the life of an outdated appliance, since second hand products would certainly perform less efficiently in terms of energy, water and detergent consumption than new products. Indeed, some would be models which have been withdrawn from production as a result of Energy Efficiency Standards.</p> <p>Clear measures should be taken in order to avoid that uncontrolled growth in the second hand market is achieved to the detriment of consumer protection and safety.</p> <p>Throughout the directive, provisions call upon Member States to encourage re-use, establish re-use targets... However, it is crystal-clear that re-use falls out of the scope of the WEEE Directive, as it is distinct from waste (I).</p> |
| Parliament (22) | <p>Amendments 13. Recital 13b In order to ensure a high level of re-use, Member States should take measures to establish an integrated and adequate network of re-use installations. The network must enable waste electrical and electronic equipment suitable for re-use to be separated from that which is unsuitable in one of the nearest appropriate installations, prior to distribution to a treatment facility.</p> <p>Amendments 82 and 87. Recital 15 With the exception of appliances to be completely re-used, all WEEE collected separately should be sent for recovery, in the course of which a high level of re-use or recycling should be achieved. Priority should be given to the re-use of WEEE and its components. In addition, producers should be encouraged to integrate recycled material in new equipment. Recycling and re-use targets need to be legally binding. Member States should further consider establishing separate targets for the re-use of whole appliances and/or components, according to the type of equipment, in order to promote re-use and the prevention of waste, on the understanding that re-use should only be encouraged if there is no equivalent new product on the market that has a clear environmental advantage in terms of consumption of energy, water or other resources, use of dangerous substances or a sustainable design.</p> <p>Amendment 21. Recital 20 (20) Information about the numbers and weight of items of electrical and electronic equipment put on the market in the Community and the rates of collection, <i>recovery, re-use (including re-use of whole appliances), recycling and export</i> of WEEE is necessary to monitor the <i>achievement of the objectives of this Directive</i></p> <p>Amendment 27. Article 3, point (d) (d) 're-use' means any operation by which WEEE is used for the same purposes for which it was conceived, including the continued use of WEEE, <i>as a whole appliance or as components</i>, which is returned to collection points, distributors, recyclers or manufacturers;</p> <p>Amendment 42. Article 6, paragraph 4 4. The European Parliament and the Council, acting on a proposal from the Commission, shall establish targets for recovery, re-use <i>(of whole appliances or components)</i> and recycling <i>of all categories in Annex IA</i> for the years beyond 2008. <i>This shall be done taking into account environmental benefits of electrical and electronic equipment in use, such as improved resource efficiency due to materials and technology development. Technical progress in re-use, recovery and recycling, products and materials, and the experience gained by the Member States and the industry, shall also be taken into account.</i></p> |

| | |
|------------------------------------|--|
| Economic and Social Committee (23) | Article 6 - 3.4.1. Finally, the Committee would stress that the lack of a separate target for the re-use of WEEE weakens the proposal's re-use objective. |
| Final redaction | <i>Re-use</i> : use of WEEE or its components for the purpose for which it was designed. Until December 31 st 2008, appliances that are re-used will not be taken into account for the calculation of the category-specific targets. |

- **Should collection include household collection? Should producers just pay collection from collection points onwards?**

| Institution | Position |
|---------------------------------------|---|
| 1 st Commission draft (19) | Member States shall ensure that, five years after the entry into force of this Directive, producers provide for the financing of the collection of WEEE from private households deposited at collection facilities, set up under Article 4(1), as well as of the treatment, recovery and environmentally sound disposal of WEEE. |
| EEB (20) | Financial responsibility for collection from private households must be re-included within producer responsibility. |
| CECED, EACEM and EICTA (25) | The proposal to allow Member States to require producers to pay for collection of waste from households is unacceptable. This would double industry's take-back costs (where fully applied), which would in turn have to be passed on in higher prices to consumers – who already pay local taxes for waste collection, in most cases! Furthermore, producers in some Member States would be required to carry much higher costs than in others, which is likely to lead to market distortions. Industry agrees to finance take-back of waste electrical and electronic equipment from collection points but not to pay for household collection, which should remain the responsibility of local authorities |
| Parliament (22) | The costs of collection, treatment and environmentally sound disposal shall be internalised within the product price. <i>Member States shall ensure that by . . . [30 months after this Directive comes into force] systems are set up so that final holders and distributors can return WEEE from private households free of charge. The systems may involve both the collection of waste from private households and the establishment of collection points. Member States shall ensure by that date the availability and accessibility of the necessary collection facilities, taking into account the population density.</i> |
| Final redaction | 1. Member States shall ensure that, by ...[thirty months after entry into force of this Directive], each producer provide at least for the financing of the collection, the treatment, recovery and environmentally sound disposal of WEEE from private households deposited at collection facilities, set under Article 5(2), onwards. 2. For products put on the market later than ...[thirty months after entry into force of this Directive], each producer is responsible for financing the operations referred to in paragraph 1 related to the waste form his own products. The producer can choose to fulfil this obligation either individually or by joining a collective scheme. The costs of collection, treatment and environmentally sound disposal shall not be shown separately to purchasers at the time of sale of new products. |

- **Who should pay for the collection and treatment of electric and electronic equipment introduced previously to the approval of the directive (i.e. the so-called “historical waste”)? Should producers be allowed to introduce a visible fee to finance historical waste?**

| Institution | Position |
|-----------------------------|---|
| 1st Commission draft (19) | The responsibility for the financing of the management of waste from products put on the market before the expiry of the period referred to in paragraph 2 –5 years - (“historical waste”) shall be shared by all existing producers. Where a producer who opts for an individual system cannot prove that he is discharging his responsibility with respect to a fair share of the historical waste, he shall contribute to the financing of an alternative system. |
| EEB (20) | <p>Collective financial producer responsibility for historical waste to come into force three years at the latest after adoption of the directive.</p> <p>Whether a fixed and visible fee may be allowed for historical waste – which will be dealt with through a collective model – needs to be further investigated. As a first opinion, considering that historical waste is already on the market and that no improvement can be made in terms of design, implementation of a fixed visible fee may be justified. On the other hand, it could also be regarded as a disincentive for further improvement in the recycling/recovery techniques and also the logistics and organisation of the management of WEEE.</p> <p>Although a visible fee ‘dedicated to the recovery of historical waste’ could be seen as an ‘educational exercise’ for consumers, in the sense that ‘we are paying an amount for the protection of the environment’, it is likely to be regarded as an extra charge to the price. Since consumers can do little about the design of electronics, the effect on that is negative rather than positive. A visible fee would only add to the taxes that consumers are already paying for their waste through local taxes</p> |
| CECED, EACEM and EICTA (25) | The requirement that take-back costs should be internalised in the product price should not be applied to waste from products sold before the Directive is implemented (so-called “historical” waste). This issue needs clarification, as the current proposed amendment is ambiguous. (<i>WEEE Art. 7 - Financing</i>) |
| Orgalime (26) | <p>Retroactive legislation is not allowed in a number of member states. It is also evident that future design of products can have no impact on historical products. Industry offers feasible solutions for dealing with historical waste on a voluntary basis on condition that appropriate financing is secured.</p> <p>The current Commission proposal tries to address the issue of historical waste by providing for a five year delay period before giving financial responsibility to manufacturers. In view of the scope of products involved / the average useful life is a 5 to 10 years for ICT products, 8 to 16 years for consumer electronics and 10 to 20 years for household appliances-the delay period of five years is intended to address only products with a short life cycle, and therefore would be inadequate for most products covered by the proposal.</p> |
| Parliament (22) | <p>Amendment 17 .Recital 17 a (new)</p> <p>The responsibility for the financing of the management of historical waste should be shared collectively by all producers existing at the time the costs arose in proportion to their respective share of the market by type of equipment. Member States should ensure that, for a transitional period based on the average life of equipment, but for no longer than ten years after the entry into force of this Directive, producers are allowed to show users the cost of collecting, treating and disposing in an environmentally sound way of historical waste on a voluntary basis at the point of sale of new products. Manufacturers making use of this provision must ensure that the costs mentioned represent the actual costs incurred.</p> |

| | |
|--|---|
| <p>Economic and Social Committee Position on 1st Commission draft (23)</p> | <p>As for the second aspect, a major point for discussion is whether producers should be allowed to levy a visible fee on new EEE as demanded by producer organizations. Whereas — according to the Commission — such a fee could act as a disincentive for producers to continuously improve their product design, it is not ruled out by the proposal. Whilst the use of a visible fee may be justified for ‘old’ EEE put on the 4.1.</p> <p>The deadline of 1 January 2004 rather than 2008 market before the entry into force of the Directive the importance of new design requirements becomes fully clear), its use after that period should be considered more critically.</p> |
| <p>Final redaction</p> | <p>The responsibility for the financing of the cost of the management of WEEE products put on the market before expiry of the period referred to in paragraph 1 (“historical waste”) shall be provided by one or more systems to which all producers, existing on the market when the respective costs occur, contribute proportionately, e.g. in proportion to their respective share of the market by type of equipment.</p> <p>Member States shall ensure that for a transitional period of 8 years (10 years for category 1 of Annex IA) after entry into force of this directive, producers are allowed to show purchasers at the time of sale of new products, the costs of collecting, treating and disposing in an environmentally sound way. The costs mentioned represent to a maximum the actual costs incurred.</p> |