

# The digital industry's views on Extended Producer Responsibility under Article 8a

Brussels, 18 May 2016

## Introduction

The digital industry is very positive about the circular economy and strongly supports moves to implement circular economy practices and thinking.

This paper provides a response to the proposals for new requirements for Extended Producer Responsibility (EPR) within the proposed new Article 8a of the Waste Framework Directive. We set out some general observations to the draft Article 8a and beneath these we examine in more detail the legal text that has been proposed, our analysis of its interpretation and implications, and propose, where appropriate, alternative wording.

This submission reflects the views of manufacturers of electronic and electrical products in the B2B, consumer electronics and telecommunication markets, who have responsibilities under three producer responsibility regimes: waste electrical and electronic products, batteries and packaging.

## Executive summary

- DIGITALEUROPE believes that there is value in harmonising certain requirements within EPR legislation (e.g. definitions) and in providing guidance and best practice that can be adopted by Member States in developing EPR regimes.
- However, DIGITALEUROPE does not support an approach where all EPR regimes should be identical: we need flexibility to adapt EPR regimes to different types of products, countries and cultures.
- We are concerned that Article 8a, in its current form, exceeds the subsidiarity and proportionality principle outlined in point 3.3 of the explanatory memorandum.
- Roles and responsibilities need to be more clearly defined, for example the role of retailers and distributors, which is currently missing. Producers cannot be expected to deliver outcomes that are outside of their scope of influence.
- Provisions rewarding good product design would be welcome. However, the criteria used to differentiate the financial contributions paid by producers must be harmonised between Member States and be based on the real end-of-life cost of products.
- Accurate data on all waste flows is crucial so that all waste that is collected and recycled is recorded, and that legislation is based on a full understanding of how waste flows through the economy.

## General points

- **Subsidiarity and proportionality:** DIGITALEUROPE has significant concerns with the current drafting of Article 8a. We disagree that it meets with Point 3.3 of the Explanatory Memorandum regarding the subsidiarity and proportionality principle. This limits amendments to providing a framework for establishing shared objectives, while leaving Member States free to decide about precise implementation methods. While we support establishing a common framework to meet a common goal, Article 8a is extremely, and arguably overly, prescriptive in its requirements and fiscal recommendations.
- **Harmonise where appropriate but retain flexibility:** For producers affected by producer responsibility regimes that operate across Europe, harmonisation is desirable for some elements of the regimes. We believe that the focus of establishing a common framework should be on establishing common definitions, member state reporting obligations, criteria for establishing differentiated costs to reflect the real costs of recycling, treatment of small producers, due diligence of producer responsibility schemes, consistent involvement of other actors in the market, and treatment and recycling standards. But it is also important that consideration is made of the nature of different types of products, national circumstances and culture, and to that end we support national transposition to reflect the systems, culture and frameworks that are already in place.
- **Existing regimes risk being non-compliant:** Article 8a appears to have been written without taking into account the level of variation in current implementation of WEEE EPR regimes across Europe and therefore the degree to which existing systems would need to be changed to meet the Article and the costs and burden on both business and Government this would entail, without any demonstrable improvements to environmental outcomes.
- **Costs implications need to be better assessed:** It is extremely difficult for us to estimate the extent to which costs would increase for producers as a result of Article 8a. It could herald new complex negotiations with local authorities to apportion costs of collecting certain products from households, which, given the number of authorities and the long-term and complex contracts already in place, will increase the complexity and time of implementation. It is unacceptable to expect producers to accept these collection and information costs without full operational control. We are also concerned that producers may inadvertently cross subsidise other waste activities. EPR regimes must be designed without risk of cost subsidisation, distortion of costs and profiteering. We would urge the European Parliament and the Member States to insist on the completion of an impact assessment so we can better assess potential costs and benefits.
- **Harmonise the criteria used to reward product design:** DIGITALEUROPE supports provisions to reward good product design. To strengthen the incentive for good product design, the criteria used to differentiate the financial contributions paid by producers must be harmonised across Europe. These requirements should, however, avoid creating additional burdens, such as

mandatory visible fees, be flexible enough to reflect true recycling costs and rapid technological change, and be based on robust and transparent data.

- **Accurate data is required to understand how waste flows through the economy:** All waste that is collected and recycled must be properly accounted for, so legislation is based on a full understanding of how waste flows through the economy and market distortions do not occur. For example, with a general trend of the value of WEEE increasing, we have witnessed more and more WEEE being collected and recycled by actors operating outside of the producer controlled WEEE systems. These “complementary WEEE flows” are being collected by an array of actors, operating from small-scale door-to-door collectors to large-scale scrap dealers and recyclers. We would like to see serious efforts to **capture data on all WEEE flows across Europe.**

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## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 62 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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