

**ENVIRONMENT DIRECTORATE
ENVIRONMENT POLICY COMMITTEE**

Working Party on Resource Productivity and Waste

**EXTENDED PRODUCER RESPONSIBILITY (EPR) AND THE IMPACT OF
ONLINE SALES**

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This is the first draft of a report that analyses the issues that arise in the context of extended producer responsibility and online sales. The report focuses on extended producer responsibility systems that address waste from electric and electronic equipment. It identifies the nature of the issues, provides information on their likely scale, as well as the related impacts on extended producer responsibility systems. At the end the report identifies current efforts and good practices in responding to these challenges. The report was prepared by Mark Hilton and Chris Sherrington (both from Eunomia and benefited from input generated through two workshops that were kindly hosted by Switzerland and Belgium.

Action required: For comments

Deadline for comments: 10 July 2017

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List of Acronyms and Abbreviations

ADF	Advanced Disposal Fee
AMTM	Australian Mobile Telecommunications Association
AR	Authorised Representatives
B2B	Business to Business
B2C	Business to Customer
BEIS	Department for Business, Energy and Industrial Strategy
CE	Conformité Européene
CWIT	Countering WEEE Illegal Trade
DTS	Distributor Take-Back Scheme (UK)
DSEWPaC	Department of Sustainability, Environment, Water, Population and Communities
EEE	Electrical and Electronic Equipment
EHF	Environmental handling fees
EPR	Extended Producer Responsibility
EPRA	Electrical Products Recycling Association
EPSC	Electronics Product Stewardship Canada
ERP	European Recycling Platform
EU	European Union
GSP	Generalised System of Preferences
ICT	Information and Communication Technology
INTERPOL	International Criminal Police Organization
IOT	Internet of Things
IPR	Individual Producer Responsibility
MS	Member State
NEPSI	National Electronics Product Stewardship Initiative
OECD	Organisation for Economic Co-operation and Development
OEM	Original Equipment Manufacture
OVAM	The Belgium environmental authorities
POM	Placed on the Market
PR	Producer Responsibility
PSA	Product Stewardship Act
PRO	Producer Responsibility Organisations
PV	Photovoltaic
SSUTA	Streamlined Sales and Use Tax Agreement
UK	United Kingdom
USA	United States of America
VCA	Vehicle Certification Agency
VAT	Value Added Tax
WEEE	Waste Electrical and Electronic Equipment
WRAP	Waste and Resource Action Programme

1. Executive Summary

1. Since the late 1980s, the concept of “Extended Producer Responsibility” (EPR) has become an established principle of environmental policy in an increasing range of countries. It aims to make producers responsible for the environmental impacts of their products throughout the product chain, from design to the post-consumer phase. It was hoped that this would relieve the burden on municipalities and taxpayers for managing end-of-life products, reduce the amount of waste destined for final disposal, and increase rates of recycling.

2. A recent survey identified about 400 EPR systems currently in operation across the globe, most of them in OECD member countries. While these systems have been highly effective in increasing recycling collection and rates, as well as generating financial resources to pay for these activities, governments are grappling with a number of issues to ensure their effectiveness and efficiency.

3. In 2001, OECD produced a Guidance Manual to support the development of EPR systems, which was updated in 2016. Along with a number of other issues, this work identified ‘free-riding’ as a challenge to many EPR schemes^{1,2,3}.

4. The advent and fast expansion of online sales in recent years is creating new free-riding opportunities as consumers are able to buy more easily from sellers in other countries that often have no physical, legal entity in the country where the consumer resides, and that are not registered with national EPR schemes. The consequence is that these sellers avoid producer and retailer/distributor obligations and costs.

5. Electrical and Electronic Equipment (EEE) is the most relevant product category for online sales, and waste electrical and electronic equipment (WEEE) EPR schemes are the most widespread across the OECD membership. They account for more than one-third of EPR systems across the globe.

6. This report provides an overview of the free-riding issues that arise in the context of EPR and online sales. To do so, the available literature was reviewed and additional information was gathered through stakeholder workshops and interviews. The report identifies the nature of the issues, and, to the extent possible, their scale, as well as the related impacts on WEEE EPR systems in OECD countries in Europe and North America. It also identifies current efforts and good practices in responding to these challenges.

7. The issue of online sales in connection with WEEE EPR schemes essentially revolves around three issues:

- Free-riding that consists in not undertaking physical ‘take-back’ obligations (often part of retailer/distributor obligations);

¹ OECD (2013), What Have we Learned about Extended Producer Responsibility in the Past Decade?: A Survey of the Recent EPR Economic Literature

² OECD (2016), Extended Producer Responsibility – Guidance for Efficient Waste Management, Paris

³ OECD (2001), Extended Producer Responsibility – A Guidance Manual for Governments, Paris

- Free-riding by not paying a share of the cost of WEEE reprocessing to the required standards; and
 - Free-riding by under-estimating the number of products Placed on the Market (POM) and hence a potential over-estimation of national WEEE recycling rates.
8. As online-sales of EEE is now a very major and growing part of retail in most OECD countries, and a very significant proportion of these sales involve cross-border trade, related free-riding is a growing concern. Some of the key insights into these issues are provided below.
9. **Scale of the problem:** While speculative, as there is no hard data, it seems likely from the evidence seen, that the overall scale of the online free-rider issue is likely to be between 5% and 10% of the Electrical and Electronic Equipment market, although online sales are of course growing and there is great variation from one territory to another and one product category to another. In the EU alone, 5% to 10% would represent 460,000 to 920,000 tonnes, i.e. very significant tonnages even in relation to the overall wider issue of illegal trade in WEEE.
10. **Type of online free-rider:** It is neither just a small-seller issue, nor is it one just confined to web sites in Asia. In some cases even the largest and best known online platforms are not registered in all territories where they should be in regard to EPR, or doing all they can to make sure all relevant sales are declared. The problem is related to other aspects of illegal activity including counterfeiting, avoidance of compliance with standards, import duty and VAT.
11. **Regulation:** Regulation and EPR rules remain very complex, and probably ambiguous and confusing for distance sellers, with a wide range of variation across the EU, US, Canada and Australia.
12. **Enforcement:** In regard to non-compliant online sellers, enforcement activity is very resource intensive and not well co-ordinated across jurisdictions, with a wide degree of potential overlap of efforts. Enforcement that is conducted by authorities beyond their jurisdiction often relies on goodwill and bilateral co-operation. In addition there seems to be little co-ordination between enforcement agencies in other fields, notably counterfeiting, product standards and tax. Several of the online sellers are taking action themselves to prevent counterfeiting although not EPR avoidance and evasion.
13. **Awareness raising:** A major issue seems to be a lack of awareness rather than a deliberate avoidance of EPR responsibilities, although the latter also seems to be happening in several cases. Some of the Producer Responsibility Organisations (and in Europe so called “authorised representatives”) are making efforts to reach out to distance sellers to make them aware of their obligations and recruit them.
14. **Cost-effective solutions:** There is probably no single, entirely effective solution to address online free-riding. However, there are a wide range of potential options to help reduce the problem. The key is getting the balance right in terms of cost-effectiveness. There needs to be a relatively simple set of solutions that are not too complex or resource intensive to implement. Some of the ideas that came-up in the workshops and interviews that were conducted in the framework of this report are provided in Box 1.1.

Box 1.1. Possible measures to address the issue of EPR and online sales

Regulation and enforcement:

- Continue to focus on simplification and harmonisation of Extended Producer Responsibility regulation, with very explicit obligations for online sellers in particular (not just distance sellers) and clear and simple guidance in plain English. In the EU, the further revisions to the WEEE and Batteries Directives, should take into account this growing problem and take more specific action.
- Require a single national/state electronic register of producers and the requirement for mandatory membership of a Producer Responsibility Organisations. The trading name of the web site should be required for registration, as well as the legal entity name, to assist compliance checks.
- Build into legislation the ability to prosecute a company for illegal action in another country to facilitate enforcement (as per the UK example).
- Consider introducing additional enforcement powers under EU and other national legislation to prevent illegal online selling, for example through obtaining a court ruling to close down websites quickly and cheaply.
- Place a requirement on multi-seller platforms to notify their Electrical and Electronic Equipment sellers that EPR registration is required and what they need to do, and to exclude those sellers that do not conform.
- Require web sites selling Electrical and Electronic Equipment to show the Producer Responsibility Organisations registration details for themselves (or the AR acting on their behalf in the European Union), to clearly display a logo to demonstrate compliance and to provide the address and contact information for the legal entity behind the site. This could potentially be combined with a requirement to show import duty and Value Added Tax details related to a purchase. This would provide a benchmark for all legitimate online sellers (who will be the ones informed of the requirements) so as to provide a simple checking mechanism for enforcement authorities and informed consumers.
- Consider making Extended Producer Responsibility obligations a condition of Conformité Européenne markings (European Union) and equivalent.
- Consider placing obligations, including physical take back and fees for recycling, on couriers and postal services in a territory where they have a delivery contract with a distance seller that is not registered and not meeting its Extended Producer Responsibility obligations.
- Investigate the potential for future Individual Producer Responsibility systems, facilitated by the Internet of Things, to provide a simple and accurate means to charge Extended Producer Responsibility fees back to Original Equipment Manufacturers/brands, hence avoiding the complexity of identifying and engaging distance sellers.

- Make becoming a member of a Producer Responsibility Organisations a condition of obtaining a Value Added Tax registration for distance Electrical and Electronic Equipment sellers.

Collaboration and Awareness Raising:

- Develop mechanisms, or potentially make it mandatory, for customs, tax and trading standards officials to work in a joined up fashion with the environmental authorities on product regulation and enforcement.
- Co-ordinate enforcement action at the supra-national/national level, e.g. across the European Union, across the United States of America, across Canada, to make enforcement less daunting for individual territories and more cost-effective overall.
- Encourage Producer Responsibility Organisations, and registered producers and distributors, to report any known free-riders to the authorities so as to assist enforcement.
- Encourage, or potentially mandate, Producer Responsibility Organisations and Authorised Representatives to undertake promotional and awareness raising work overseas, and particularly in the Far East.
- As an alternative to legislation on the matter, introduce an Organisation for Economic Co-operation and Development -wide voluntary standard for web sites that includes the measures noted above (Producer Responsibility Organisations registration details; address/contacts; logo), potentially building on the SafeShops.be model.

2. Introduction and project scope

15. Since the late 1980s, the concept of “Extended Producer Responsibility” (EPR) has become an established principle of environmental policy in most OECD countries and also beyond. It aims to make producers responsible for the environmental impacts of their products throughout the product chain, from design to the post-consumer phase. It was hoped that this would relieve the burden on municipalities and taxpayers for managing end-of-life products, reduce the amount of waste destined for final disposal, and increase rates of recycling.

16. A recent survey identified about 400 EPR systems currently in operation across the globe, most of them in OECD member countries. Nearly three-quarters were established since 2001. Legislation has been a major driver, and most EPRs appear to be mandatory rather than voluntary. Small consumer electronic equipment accounts for more than one-third of EPR systems, followed by packaging and tyres (each 17%), end-of-life vehicles, lead-acid batteries and a range of other products. While in some cases individual firms have established their own systems, in most cases, producers have established collective EPR systems managed by Producer Responsibility Organisations (PROs)

17. In 2001, OECD produced a Guidance Manual to support the development of EPR systems, which was updated in 2016. This work addresses a number of issues, including the governance of EPR systems, competition aspects, incentives for more environmental product design, as well as the challenges that arise due to the presence of a large informal sector. Along with these, the OECD Guidance identified ‘free-riding’ as an important challenge to many EPR schemes^{4,5 6}.

18. The advent and fast expansion of online sales in recent years is creating new free-riding opportunities as:

- consumers are able to buy more easily from sellers in other countries that often have no physical legal entity in the country where the consumer resides; and
- such sellers are not registered with national EPR schemes, hence avoiding producer and retailer/distributor obligations and costs.

19. As noted in the 2014 Global Forum on Environment: Promoting Sustainable Materials Management through Extended Producer Responsibility (EPR)⁷:

The rise in internet sales is a clear challenge for EPR in all countries, and particularly in OECD countries where online markets are beginning to achieve significant market share. Products sold online frequently free ride on EPR systems. This phenomenon is especially noticeable among small-scale internet

⁴ OECD (2013), What Have we Learned about Extended Producer Responsibility in the Past Decade?: A Survey of the Recent EPR Economic Literature

⁵ OECD (2016), Extended Producer Responsibility – Guidance for Efficient Waste Management, Paris

⁶ OECD (2001), Extended Producer Responsibility – A Guidance Manual for Governments, Paris

⁷ The State of Play on Extended Producer Responsibility (EPR): Opportunities and Challenges. Global Forum on Environment: Promoting Sustainable Materials Management through Extended Producer Responsibility (EPR). 17-19 June 2014, Tokyo, Japan

sales companies that are difficult to identify and can more easily act as free riders. This puts national producers who are contributing to EPR schemes at a competitive disadvantage. The issue is exacerbated in markets where it is difficult to identify manufacturers, especially in emerging economies characterized by large counterfeiting and second-hand sectors and illegal importers/exporters.

20. Electric and Electronic Equipment (EEE) is the most relevant product category for online sales, and EPR schemes that focus on EEE waste are the most widespread across the OECD membership. By consulting a wide range of literature and seeking comments from stakeholders through meetings, interviews and two workshops this report aims to examine:

- The issues - including identifying their nature and, to the extent possible, their scale- surrounding online sales of EEE and the related impacts on WEEE EPR systems in OECD countries in Europe and North America; and
- Current activity and good practice in responding to the challenges faced by the EPR schemes and regulators in OECD countries.

21. This work was carried-out through a wide ranging literature search using known sources, and a broader internet search covering the EU, US, Canada and Australia. Subsequent to the literature search, a workshop was held in Bern on March 10th 2017, supported by the European Commission and the Swiss Government. Further meetings were held at VIL (logistics research and innovation) in Mechelen (Belgium) and at OVAM, the public waste management agency in Flanders on March 22nd 2017, both to discuss the situation and good practices in Belgium. Further interviews were held with stakeholders in the UK, USA and Canada (Appendix 1).

22. It should be noted that the current, draft, study is not intended to provide a comprehensive assessment of *all* the issues relating to online sales for each type of WEEE EPR scheme in *all* OECD countries. It has, however, allowed to identify a wide consensus on the issues faced and the need for further action, as well as some of the potential ways to deal with the issues.

3. Characterising the issue

23. The issue of online sales in connection with WEEE EPR schemes essentially revolves around three challenges:

- Data inaccuracy linked to an under-estimation of the number of products Placed on the Market (POM) for WEEE EPR schemes and hence a potential over-estimation of national WEEE recycling rates;
- Free-riding in terms of not undertaking physical ‘take-back’ obligations (often part of retailer/distributor obligations); and
- Free-riding in terms of not paying a share of the cost of WEEE reprocessing to the required standards.

24. Free-riders can be quite diverse and include producers that are registered with a producer responsibility organisation (PRO) but not fully declaring their POM figures, producers that are not registered at all or retailers/distributors that are avoiding their take back obligations.

25. The ‘free-riding’ means that products can (depending on the type of EPR system) be left ‘orphaned’, without anyone to take responsibility for their end-of-life, or more commonly leaving other legitimate producers that are registered in-country having to take (additional) responsibility and pick up the bill. This places an unfair burden on responsible companies and makes them less competitive as a result.

26. It is worth noting that online sales can either be through e-commerce companies in the consumer’s own country, where the EPR system operates, or in other countries:

- within an economic bloc, most notably the EU (where the same broad rules apply via the WEEE Directive);
- within other OECD countries where similar systems also often apply and are well-known; or
- in less developed countries with a large manufacturing base, most notably Eastern European and Asian countries, where EPR systems may not be common or well-understood.

27. All things being equal, the potential issues will be most prevalent where:

- Online sales account for a significant proportion of the product market;
- The high value of the product, and importantly, significant purchase price differentials between countries, means a high likelihood of consumers seeking to purchase online from overseas; and
- Products have a relatively low bulk and weight relative to their value, meaning that shipping charges for products purchased via overseas e-commerce retailers will be relatively low in proportion to the product value⁸.

28. Online sales of small consumer electronics, and higher value small domestic appliances and hygiene products (e.g. electric toothbrushes), is therefore the key issue,

⁸ OECD (2013), What Have we Learned about Extended Producer Responsibility in the Past Decade?: A Survey of the Recent EPR Economic Literature

large domestic appliances typically only being handled by retailers with either ‘bricks and mortar’ retail outlets or physical distribution centres in country and hence are less of an issue from an enforcement perspective. Small consumer electronic equipment accounts for more than one-third of that dealt with by EPR systems⁶¹.

29. It should be noted that the EPR issues link closely to the issues around counterfeiting of consumer electronics, a lack of adherence to standards (including safety standards) and the avoidance of import duty and Value Added Tax (VAT) to gain market advantage in overseas markets. Similar challenges surround the sale of batteries, particularly third party battery (non-OEM approved) imports in the so-called ‘grey-market’.

30. It is also worth noting that the longer the period of time that EPR schemes have been in place, the greater the likelihood that:





- Stakeholders will be aware of the issues and impacts on their schemes arising from online sales; and
- Stakeholders will have undertaken, or at least identified, potential ways of addressing these issues.

31. Enforcement of obligations of producers/sellers based within a country with an EPR system is relatively straight forward. However, for regulators to identify and deal with non-compliance, free-riding and illegal activity in other countries, or even within different States or Provinces in the USA and Canada respectively, is a far more difficult issue.

32. A key, overarching, challenge relating to online sales and EPR, particularly where items are purchased online from retailers based in third countries, is the lack of data about such transactions. This is not necessarily due to online retailers seeking to avoid transparency as to the destination of products purchased from their site. Some Chinese sites will certainly sell and ship to the EU or USA through a variety of shipping methods, the example in Figure 3.1 being for DHGate to a UK destination:

Figure 3.1. Shipping methods

Choose shipping method: (shipping inquiry)

Company	Shipping Origin	Tracking	Shipping Time: ⚡	Shipping Cost: ⚡
<input checked="" type="radio"/> 	China	Unavailable	17-19 Days	Free Shipping
<input type="radio"/> 	China	Available	5-22 Days	Free Shipping
<input type="radio"/> 	China	Unavailable	12-25 Days	US \$15.78
<input type="radio"/> 	China	Available	2-6 Days	US \$45.47

33. There are examples, however, where online retailers based in one country will not ship certain products to other countries, including BestBuy.com, the market leader for EEE in the USA⁹.

34. However, in response to this issue - which many consumers see as an impediment to their freedom to purchase items at reduced prices online - a 'work-around' has been devised in the form of 'package forwarding companies', including:

- Borderlinx
- Viabox
- Myus
- Bongous
- Shipito

35. These companies will sell a consumer the use of an address, typically based in a location where sales tax is low, such as Delaware (where it's actually 0%). In such a case items purchased on American websites can then be delivered to this address, from where they will then be forwarded to the consumer's actual address in other countries around the world. Similar companies operate in Europe including AlfaSent in the UK (<http://www.alfasent.com/>).

36. Furthermore the Generalised System of Preferences (GSP) for import into the EU allows products from a range of developing countries to pay a lower rate of import duty, hence potentially allowing a further loophole in terms of package forwarding.

37. In summary, it is clear that there are a number of potential avenues for free-riding, both deliberate and accidental. The extent of the issue is discussed in Section 5 while Section 6 addresses the potential solutions. Section 4 outlines some of the relevant features of different WEEE EPR systems.

⁹ Interestingly, Macy's and Target both indicate on their websites that they have now teamed up with a company called Borderfree to offer international sales. While Borderfree notes that it ensures compliance with all import taxes and duties, it is unclear whether EPR requirements are met.

4. WEEE Regulations and EPR

38. To put the study into context it is important to understand the fundamental aspects of, and differences between, the WEEE EPR systems in place in different OECD regions. This report describes systems in Europe, the USA, Canada and Australia, where information was easily available.

4.1. The EU WEEE Directive

39. Directive 2002/96/EC on waste electrical and electronic equipment was the first Directive to address how to improve the environmental management of WEEE and to enhance the resource efficiency of collection, treatment and recycling of electrical and electronic equipment at the end of its life¹⁰. It entered into force in February 2003 and provided for the creation of collection points at retailers and/or public collection points where consumers can return their WEEE free of charge. The aim of these systems were to increase the collection rates and to ensure the proper treatment of WEEE.

40. Directive 2002/96/EC and its amendments were repealed by Directive 2012/19/EU, known as the WEEE Recast (hereafter the WEEE Directive) and this became effective on 14 February 2014. Article 2(1) of the recast Directive widens the scope of the Directive 2002/96/EC on WEEE (“the old WEEE Directive” in this report) from 10 categories, to effectively all electrical and electronic equipment (EEE), set out under six broad categories (from August 2018). This is important as confusion over scope (i.e. what is in and out) can affect the free-rider issue.

41. The definitions of producer and distributor are also very relevant and are provided in Box 4.1 and Box 4.2.

¹⁰ Directive 2002/96/EC of the European Parliament and of the Council of 27th January 2003 on Waste Electrical and Electronic Equipment (WEEE) (OJ L 37/24 of 13.2.2003)

Box 4.1. Definition of a producer

‘Producer’ means any natural or legal person who, irrespective of the selling technique used, including distance communication within the meaning of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts:

- (i) is established in a Member State and manufactures EEE under his own name or trademark, or has EEE designed or manufactured and markets it under his name or trademark within the territory of that Member State;
- (ii) is established in a Member State and resells within the territory of that Member State, under his own name or trademark, equipment produced by other suppliers, a reseller not being regarded as the ‘producer’ if the brand of the producer appears on the equipment, as provided for in point (i);
- (iii) is established in a Member State and places on the market of that Member State, on a professional basis, EEE from a third country or from another Member State; or
- (iv) sells EEE by means of distance communication directly to private households or to users other than private households in a Member State, and is established in another Member State or in a third country.

Box 4.2. Definition of a distributor

‘Distributor’ means any natural or legal person in the supply chain, who makes EEE available on the market. This definition does not prevent a distributor from being, at the same time, a producer.

Furthermore Article 16(1) of the WEEE Directive states that:

Member States shall, in accordance with paragraph 2, draw up a register of producers, including producers supplying EEE by means of distance communication. That register shall serve to monitor compliance with the requirements of this Directive.

Producers supplying EEE by means of distance communication as defined in Article 3(1)(f)(iv) shall be registered in the Member State that they sell to. Where such producers are not registered in the Member State that they are selling to, they shall be registered through their authorised representatives [AR] as referred to in Article 17(2).

42. With regard to producers as defined above, Article 17(2) of the Directive states that:

the Member State in which they are established shall ensure that these producers appoint an authorised representative [AR] in the Member State(s) to which they sell EEE by means of distance communication while not being established in that Member State(s), in order to have somebody ensuring compliance with their obligations as producers.

43. The aim is to reduce free-rider activity, but of course, this still requires enforcement in the particular Member State which is not a simple matter. Each producer, or their authorised representative (where appointed under Article 17 of the Directive), has to be registered and have the possibility of entering all relevant information online in their national register reflecting their activities in that Member State.

44. Moreover, *“producers are allowed to set up and to operate individual and/or collective take-back systems for WEEE from private households”. In any case, according to Article 12 “each producer shall be responsible for financing the operations referred to in paragraph 1 relating to the waste from his own products. The producer may choose to fulfil this obligation either individually or by joining a collective scheme”.* These collective schemes are Producer Responsibility Organisations (PROs), often formed by producers, which in turn, must usually be authorised by the national authority.

45. The collection, treatment and accounting system for WEEE collected and treated must both demonstrate that the general national targets are met but also that each producer can demonstrate it has fulfilled its individual obligations. In general EU countries have one or more collective schemes (Producer Responsibility Organisations; PROs) that take on responsibilities on behalf of the producers. Fees are generally charged back to producers once the collective costs are known on an annual basis and apportioned based on a market share calculation from declarations of what each producer has put on the market (POM).

46. In terms of distributors (generally the retailers), *“when supplying a new product, distributors are responsible for ensuring that such waste can be returned to the distributor at least free of charge on a one-to-one basis as long as the equipment is of equivalent type and has fulfilled the same functions as the supplied equipment”.* In addition, *“distributors provide for the collection, at retail shops with sales areas relating to EEE of at least 400 m², or in their immediate proximity, of very small WEEE (no external dimension more than 25 cm) free of charge to end-users and with no obligation to buy EEE of an equivalent type”.* A Derogation for these retailer obligations is allowed in the UK where there is a Distributor Take Back scheme to support alternative free collection in municipalities but in other European countries take back at retailers is a mandatory requirement.

47. It is also worth noting that under Article 18, Member States have to ensure that authorities responsible for implementing the Directive co-operate with each other, in particular to establish an adequate flow of information between national registers to ensure that producers comply with the provisions of the Directive.

4.2. EPR Systems for WEEE in Canada

48. Several Provinces in Canada have WEEE EPR systems that have to deal with the EEE imported into Canada, mostly via the USA. Canada’s WEEE system is very different compared to the EU’s in that there is no harmonizing federal law and the Provinces have total jurisdiction over WEEE Stewardship.

49. While each province has slightly different regulations, there is, however, a single national PRO called EPRA, the Electrical Products Recycling Association, which deals with around 100,000 tonnes of old electronics each year. EPRA is a not-for-profit organisation managing government-approved programs that are established by manufacturers, retailers and other stakeholders to collect and responsibly recycle end-of-life electronics.

50. EPRA is fulfilling this role on behalf of obligated stewards in eight of the nine provinces that have EEE products stewardship regulations: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, and Newfoundland & Labrador. Electronic Products Recycling Association (EPRA) Businesses selling regulated electronic products in these provinces can meet their compliance obligation by participating in the EPRA Program.

51. Several Provinces have introduced language in Regulation that has helped with out of Province sellers by identifying Stewards as *“a person who:*

(i) sells, offers for sale or distributes unused, obligated electronic products in the Province,

(ii) is the owner or licensee of a trademark under which obligated electronic products is sold or distributed in the Province, whether or not the trademark is registered, or

(iii) imports the obligated electronic product into the Province for sale or distribution.”

52. A key component of the funding model adopted for the implementation of EPR in Canada includes the use of environmental handling fees (EHFs). These fees, which are paid by obligated stewards and passed on to customers at the point of purchase, are determined on a per unit basis and can vary between provinces depending on the costs required to operate the program, such as the costs associated with collection, transportation, and processing.

53. The fees that stewards must pay to EPRA for managing their WEEE are reviewed and adjusted as required. Also important to note is that EHF's are to be charged only once in the supply chain, although they may be passed down through the product supply chain to the final consumer. Inflation of the fees through the supply chain is a significant concern, and voluntary use of a ‘visible fee’, that the consumer can see on their store receipt is encouraged for B2C products such as consumer electronics.

54. As with the sale of most goods and services in Canada, consumers pay sales tax on the purchase of electrical and electronic equipment. If the EHF is built-in to the price of the product, then it will also be taxed as part of the total product price. It is important to note, however, that while the applicable tax is remitted to government, no part of the EHF itself is remitted to government, only to the EPRA.

55. EPRA has also done a lot of work in educating internet sellers so that they participate in paying the appropriate Provincial recycling fees. EPRA has been able to engage internet sellers from out of country, such as Amazon or Alibaba, but only when they have ‘bricks and mortar’ distribution centers in Canada. Alibaba, for example, was outside the system until it established a warehouse in Vancouver (British Columbia), and is now registered in regard to all Canadian Sales to provinces with EPR regulation.

56. EPRA also note that, while it can be a laborious process, they have been able to audit some of the large players including Amazon in the USA, using “forensic” auditing techniques to check on what has actually been sold against what has been declared under the EPR system. Smaller overseas sellers are not worth the effort to chase.

57. Finally it is worth noting also that in Canada Customs is federal and they can only collect taxes, not environmental fees at the Provincial level, hence this approach is not possible as a simplification.

4.3. EPR Systems for WEEE in the USA

58. The legislation surrounding, and enforcement of, Extended Producer Responsibility (EPR) in the USA varies widely between states, given that there is no legal framework provided at the federal level. Product specific EPR measures for end of life batteries began in some states in the mid-1990s, but take-up has been slow with other types of waste, including electronics.

59. At present 26 states have some sort of WEEE EPR or recycling bill that require brand owners (notably not importers or sellers, distance or otherwise) to undertake activities to increase the collection and recycling of waste electronics. These all differ in terms of registration procedures and reporting requirements hence requiring significant resources from the original equipment manufacturers (OEMs)/brand owners. PR programs often require each manufacturer to register with the state regulatory agency¹¹.

60. From 2001 to 2004, Minnesota participated in the National Electronics Product Stewardship Initiative (NEPSI), an ultimately unsuccessful attempt to develop a national product stewardship approach in the US for WEEE¹². In July 2007 they implemented their own WEEE scheme that included Video Display Device and Covered Electronic Device. The scheme is funded by manufactures that are responsible for ensuring that products are recycled and they face fines should they fail to reach designated recycling levels. Fees are collected from registered manufactures by The Minnesota Department of Revenue who also collect fines when goals are not met¹³.

61. To encourage the manufactures to collect WEEE for recycling from the more remote areas in the state as well as in the cities where collection is easier, a credit of 0.5 pounds is added to each pound of WEEE collected outside of the main city area. This appears to be an effective way of ensuring that recycling facilities are available for all¹⁴.

62. As Manufacturers, collectors and recyclers are required to register with the State, unregistered manufactures cannot sell their VDDs and retailers can only sell registered

¹¹ Hickle, G. T. (2013), Comparative Analysis of Extended Producer Responsibility Policy in the United States and Canada

¹² Product Stewardship in North America and Europe: Prepared for Department of the Environment, Water, Heritage and the Arts on behalf of the Waste Policy Taskforce June 2009

¹³ Product Stewardship in North America and Europe: Prepared for Department of the Environment, Water, Heritage and the Arts on behalf of the Waste Policy Taskforce June 2009

¹⁴ Product Stewardship in North America and Europe: Prepared for Department of the Environment, Water, Heritage and the Arts on behalf of the Waste Policy Taskforce June 2009

brands to consumers (including retail, online sales and catalogue sales). Both of these compulsory regulations help to prevent free-riders¹⁵.

63. In Minnesota it is interesting to note that laptops and mobile phones were taken out of the EPR scheme as it was considered that the market itself would work where products such as these had good residual value. That said, evidence from Canada and Europe shows that consumers often hoard phones for various reasons including concerns over data security.

64. Some stakeholders in the USA have been calling for Congress to assume a greater role in developing EPR in order to achieve higher levels of consistency between State level approaches¹⁶.

4.4. EPR systems for WEEE in Australia

65. The Product Stewardship Act (PSA) was implemented in Australia in 2011¹⁷, it is a flexible approach to EPR that recognises that each product and industry is unique and that one EPR legislation would be difficult to enforce across the board. The PSA provides a framework that allows for industries and products to be regulated in several ways, while also making provision for voluntary activities:

- Voluntary accreditation of schemes encourages product stewardship without the need for regulation and provides the community with certainty that accredited schemes are actually achieving what they claim. Product stewardship organisations that are accredited under the legislation must meet specific requirements that ensure they carry out their activities in a transparent and accountable manner
- Co-regulatory product stewardship schemes are delivered by industry and regulated by the Australian Government. The exact requirements are detailed in separate regulations for each scheme. Televisions and computers are the first items to be regulated under the co-regulatory provisions in 2009
- Mandatory product stewardship places a legal obligation on parties to take certain actions in relation to a product. Requirements that can be placed on parties using the legislation include the labelling of products, making arrangements for recycling products at end of life, or requiring a deposit and refund to be applied to a product.

4.4.1. Televisions, Computers and Computer Peripherals

66. In 2011–12, over 15 million televisions, computers, monitors and printers were imported into Australia, along with over 22 million computer parts and peripherals. In

¹⁵ Product Stewardship in North America and Europe: Prepared for Department of the Environment, Water, Heritage and the Arts on behalf of the Waste Policy Taskforce June 2009

¹⁶ Hickle, G. T. (2014), Moving beyond the “patchwork:” a review of strategies to promote consistency for extended producer responsibility policy in the U.S.

¹⁷ <http://www.environment.gov.au/topics/environment-protection/nwp/reporting/product-stewardship>

total, an estimated 140 000 tonnes of these products were brought into Australia, around 6kg for every Australian¹⁸.

67. The Product Stewardship (Televisions, Computers and Computer Peripherals) Regulations 2011 commenced on 8th November 2011 and requires Australian importers and manufacturers of televisions and computers to join and fund government-approved, industry-run co-regulatory arrangements, which are then able to collect and recycle products on their behalf at over 660 collection points across Australia¹⁹. The scheme supplements state, territory and local government e-waste management, but does not entirely replace these activities²⁰.

68. Thresholds apply to limit the impact of the scheme on small businesses by exempting companies that import or manufacture fewer than 15,001 computer parts or peripherals or 5,001 televisions, computers or printers²¹ per year. There are a number of administrators meaning that there is competition in the system which provides options for different liable parties and as all recycling service providers have to be certified to a specific standard (AS 5377) there is a consistent level of service across operators²². Importantly, the Australian Customs and Border Protection Service are required to provide data to the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC), to support the operation of the Schemes²³.

4.4.2. Mobile Phones

69. There is no mandatory stewardship programme for small consumer electronics, however MobileMuster is a recycling program for mobile phones run by the Australian Mobile Telecommunications Association (AMTA)²⁴. It is funded voluntarily by its members, including handset manufacturers, battery distributors and mobile phone network service providers who all pay an advance recycling levy of 42 cents for every handset they import into Australia. A small recycling rebate is also received, offsetting around 3 per cent of the program's costs²⁵.

70. MobileMuster was initiated by the AMTA in 1999 to collect and recycle handsets, batteries and accessories from a network of over 4500 mobile phone retailers, local councils, government agencies and business drop-off points across Australia. The

¹⁸ <http://www.environment.gov.au/system/files/resources/0a517ed7-74cb-418b-9319-7624491e4921/files/factsheet-ewaste.pdf>

¹⁹ *Ibid*

²⁰ <http://www.environment.gov.au/protection/national-waste-policy/television-and-computer-recycling-scheme>

²¹ <http://www.environment.gov.au/protection/national-waste-policy/publications/factsheet-national-television-and-computer-recycling-scheme-operation>

²² <http://www.lexology.com/library/detail.aspx?g=504bff29-edd6-452e-9ffc-da46246efd63>

²³ AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2010/56

²⁴ <http://www.environment.gov.au/system/files/resources/0a517ed7-74cb-418b-9319-7624491e4921/files/factsheet-other-arrangement.pdf>

²⁵ <http://www.environment.gov.au/system/files/resources/0a517ed7-74cb-418b-9319-7624491e4921/files/factsheet-other-arrangement.pdf>

recycling service is free to consumers, schools, businesses, local councils and government agencies.

71. In 2011/12, a collection rate of just over 51 % was achieved in terms of the mobile phones available for recycling²⁶.

5. The Extent of the Issue

5.1. E-Commerce Market Trends

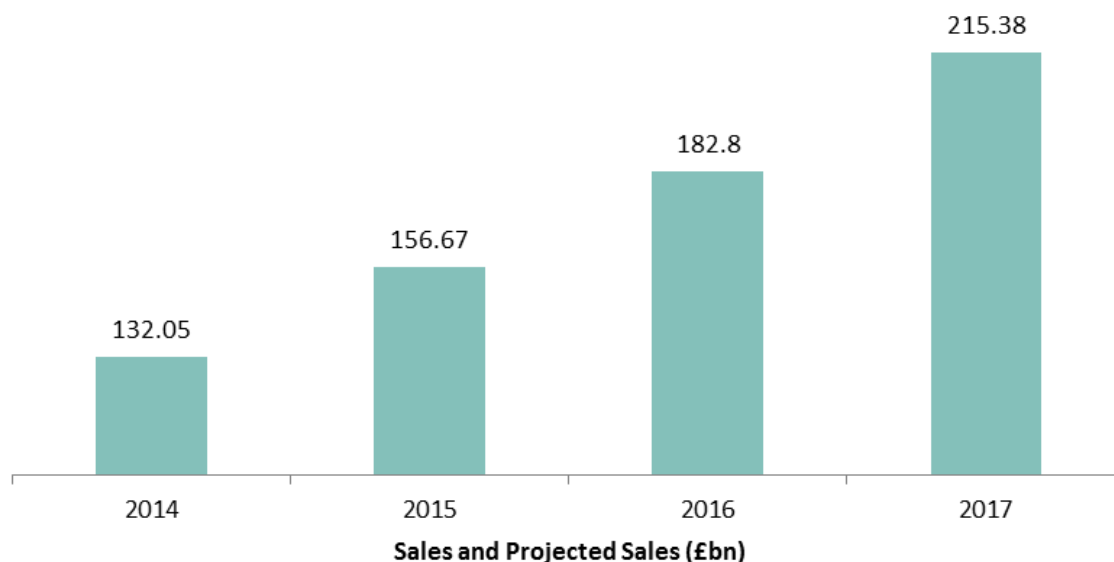
72. The research conducted for this paper suggests that online-sales of EEE is now a very major and growing part of retail in the OECD countries and that a very significant proportion of these sales involve cross-border trade.

73. E-commerce is the fastest growing retail market in Europe and North America. Online sales in the UK, Germany, France, The Netherlands, Sweden, Italy, Poland and Spain grew from £132.05 bn [\$156.28 bn] in 2014 to £156.67 bn [\$185.39 bn] in 2015 (+18.6%). Online sales were expected to reach £182.80 bn [\$216.32 bn] in 2016 (+16.7%) and £215.38 bn [\$250.28 bn] in 2017²⁷.

²⁶ <http://www.environment.gov.au/system/files/resources/0a517ed7-74cb-418b-9319-7624491e4921/files/factsheet-other-arrangement.pdf>

²⁷ <http://www.retailresearch.org/onlineretailing.php>

Figure 5.1. Online Sales in the UK, Germany, France, The Netherlands, Sweden, Italy, Poland and Spain.



Source: <http://www.retailresearch.org/onlinereetailing.php>

74. Consumer electronics are now overtaking books as the second most popular product category in Europe. Purchasing home electronics online is particularly popular in Germany, the Netherlands and the United Kingdom; nearly four out of ten people who have shopped online have bought an item in this category²⁸. Consumer electronics in the UK and the USA appear to be the largest online sales product category (by value), with 29% of online sales in the UK being EEE in 2015^{29 30}.

75. Online EEE retail market share in the EU is thought to be in excess of 30% overall, with some countries far higher and some lower. Mintel estimated that in 2015 around 48% of all electrical and electronic good sales in the UK were made online³¹. In Belgium the market share in 2015 was ~24% of the total electrical and electronics sales by value³². In Switzerland the figure is believed to be around 29%, with 18% of online

²⁸ E-commerce in Europe 2015, Postnord

²⁹ <http://store.mintel.com/online-retailing-uk-july-2015>

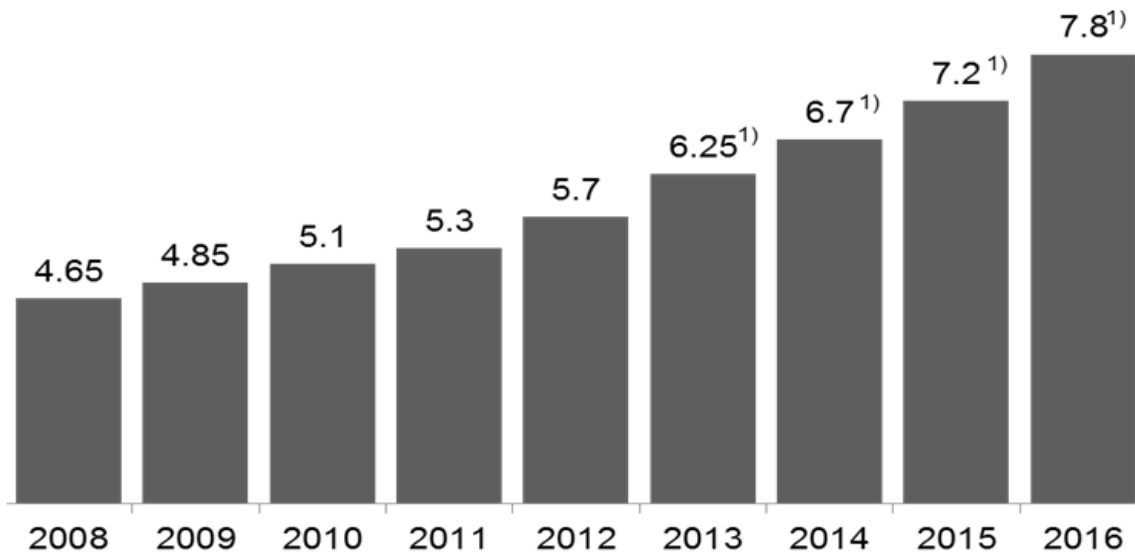
³⁰ eMarketer (2014) US Retail Ecommerce Sales Highest for Computers, Consumer Electronics, April 11 2014, available at <http://www.emarketer.com/Article/US-Retail-Ecommerce-Sales-Highest-Computers-Consumer-Electronics/1010759>

³¹ <http://store.mintel.com/online-retailing-uk-july-2015>

³² <https://www.kenresearch.com/consumer-products-and-retail/consumer-electronics/electrical-electronics-retailing-belgium/37632-95.html>

retail sales as a whole (all products) being cross-border³³. The Swiss Retail Federation also estimates that around 22 million parcels cross the border every year, of which at least 25% contains EEE.

Figure 5.2. E-commerce Development in Switzerland (share of total sales).



Source: Data from the Swiss Retail Federation provided at Workshop on 10 March 2017 in Bern, Switzerland.

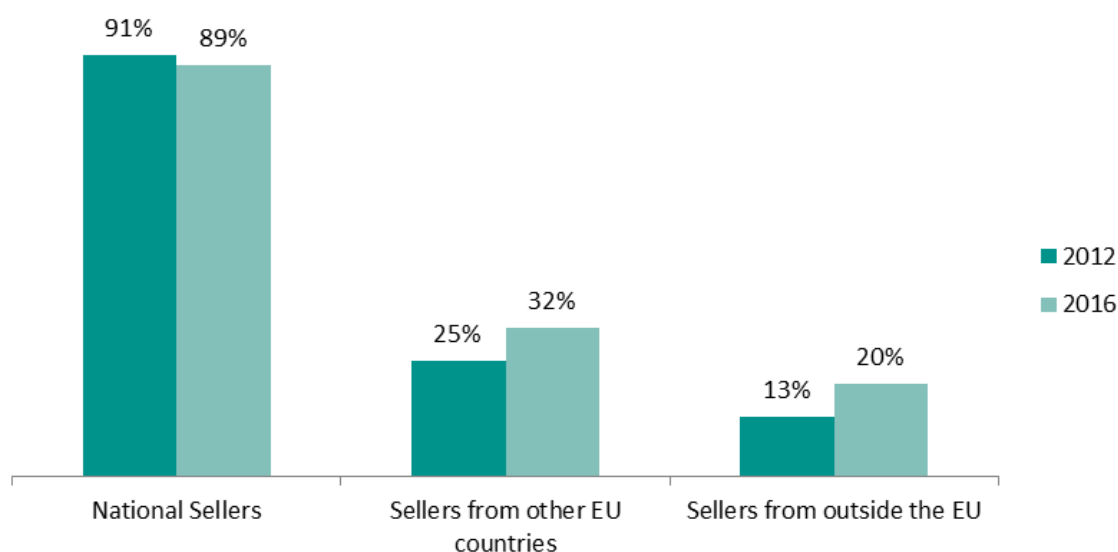
76. In the UK, around 34% of online EEE sales are by multichannel retailers such as Argos and Dixons (which also have physical stores across the UK). Online sales for these retailers now represents a significant share of their overall sales of home electronics at more than 40%, or closer to 70% in some cases, with ordering online and collecting the product in store being a significant part of online sales³⁴.

77. According to a survey for Eurostat³⁵, 32% of online shoppers bought or ordered goods or services from sellers in other EU countries. Cross-border online purchases can be an indicator of the smooth functioning of the single market for e-commerce and the extent to which consumers make use of wider choices and lower prices. A large majority of e-shoppers in the 12 months prior to the survey made online purchases from sellers in their own country: 89%, i.e. down by 2 percentage points from 2012. A rising trend is observed for purchases from sellers in other Member States (from 25% in 2012 to 32% in 2016) and from sellers outside the EU (from 13% in 2012 to 20% in 2016).

³³ Data from the Swiss Retail Federation provided at a project meeting.

³⁴ Simon Bryant *Consumer Electronics*, Futuresource Consulting in http://www.chinadaily.com.cn/business/2016-11/18/content_27415839.htm

³⁵ http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals

Figure 5.3. Proportion of online shoppers in the EU buying nationally or overseas

Source: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals.

78. 58% of British online consumers bought a product overseas in 2015, ranking it first place in Postnord's e-commerce study. When British consumers buy abroad, they are most likely to turn to products from US, Chinese or German websites³⁶. Of those shoppers purchasing from out of country online retailers, 44% of shoppers say they'd be likely to buy consumer electronics or computers³⁷.

79. Mintel's research in the UK shows that internet retail sales made by companies without stores are expected to overtake online sales by store-based retailers for the first time in 2015³⁸. It is worth noting that several huge online retailers have a very large market share including Amazon, eBay, Best Buy (USA), Alibaba (China), JD.com (China) and DHGate (China).

80. An analysis by Slice Intelligence³⁹ found that 43% of all online retail sales in the US went through Amazon in 2016, as the company's market share continues to grow. According to the study, which analysed more than 4 million online purchases, Amazon accounted for the majority (53%) of the growth in US e-commerce sales for the year. Amazon took around 20% of the online EU market for electricals in 2013, while its closest competitor captured an online market share of less than 4%⁴⁰.

³⁶ <https://www.twenga-solutions.com/en/insights/ecommerce-united-kingdom-facts-figures-2016/>

³⁷ <http://www.pwc.com/gx/en/industries/retail-consumer/global-total-retail/retail-category-electronics.html>

³⁸ <http://store.mintel.com/online-retailing-uk-july-2015>

³⁹ <http://uk.businessinsider.com/amazon-accounts-for-43-of-us-online-retail-sales-2017-2?r=US&IR=T>

⁴⁰ <http://www.mintel.com/blog/retail-market-news/amazon-dominates-online-electrical-goods-retailing-in-europe>

81. The study notes that Amazon’s growth in 2016 was driven by sales in the electronics, home, and apparel categories. Electronics contributed to an estimated 18% of the company’s sales growth in 2016, as the number of US households that own an Amazon Echo device more than doubled from 2015. Amazon has already displaced Walmart as the second-largest retailer of consumer electronics, and is set to overtake Best Buy, the long-time online market leader, which has continued to lose market share.

5.2. Counterfeit Goods and Other Illegal Imports

82. As noted earlier, the EPR free-riding issue is linked in a sense to other illegal activity, including counterfeiting of EEE. Work in this area could help to give an indication of the scale of the issue since the companies making and selling counterfeit goods, or avoiding import duty or CE standards, are unlikely to be registered with EPR schemes.

83. Electrical Safety First investigated consumer attitudes towards counterfeit electrical goods for two years running in the UK. In 2016 this revealed that an estimated 2.5 million British consumers (around 5% of the adult population) have, knowingly or by accident, purchased a counterfeit electrical product in the previous 12 months⁴¹. This is double the number of people that reported purchasing a counterfeit in the previous year (2015).

84. British consumers reported that they were twice as likely to see counterfeit electrical products for sale near them or online as they were one year ago. Looking specifically at where counterfeit sales are being made, it’s clear that a new marketplace has emerged with 7% of people reporting that they have bought counterfeit electrical products through a social media advert. Online retailers still account for the majority of counterfeit purchases; three in five (60%) of all counterfeit electrical purchases take place online.

85. The research proves that it’s not always easy for people to spot a fake. When asked to identify fake and genuine electrical products from images, the majority of UK consumers had difficulty telling them apart. 75% of consumers were unable to identify genuine GHD hair straighteners and 60% could not spot a fake Apple charger. Over half of consumers said that they would be likely to buy a product that was described as “genuine,” “real” or “authentic”.

86. 20% of online shoppers admit to spending absolutely no time assessing whether an electrical item is genuine and over half presume that electrical items for sale online are genuine. Additionally, some people are knowingly buying fake electrical items. Perhaps unsurprisingly, cost is the most influential factor on those who consider purchasing counterfeit electrical items. 17% of consumers say they would consider buying a product they suspected was fake if it was cheaper than the original.

⁴¹ <http://www.electricalsafetyfirst.org.uk/media-centre/press-releases/2016/06/british-consumers-now-twice-as-likely-to-buy-a-counterfeit-electrical-product/>; <http://www.electricalsafetyfirst.org.uk/media-centre/press-releases/2016/11/making-a-black-friday-list-check-it-twice,-advises-electrical-safety-first/>

Box 5.1. Recent media report on counterfeited goods being sold online

Derek O’Carroll, chief executive of Brightpearl, says that online marketplaces are a factor behind the increase in counterfeit purchases claiming that sites such as Amazon and eBay have become “vulnerable incubators for fraudsters looking to harness their global reach to sell their phoney products” Brand protection firm, Red Points, have gathered data on fake merchandise sales which found the worst offenders to be AliExpress, Facebook, Tokopedia and Amazon (Figure 5.4).

Oliver Smith, intellectual property specialist at Keystone Law, notes that Amazon’s decision two years ago to give Chinese manufacturers direct access to its marketplace exposed it to the world’s biggest producer of fakes. Meanwhile, the old review-based system of policing marketplaces, in which buyers rate sellers based on the quality of product and service, only goes so far. Traders with plenty of negative feedback can still ply their wares. Mr Smith says the main legal responses to fraud – 2013 EU Customer Regulation, 1994 Trade Markets Act and 1988 Copyright, Designs and Patents Act, as well as search and seizure orders under civil law – can’t combat the problem fast enough.

“The problem with these laws is the time and money it takes to deal with each infringer and the ‘whack a mole’ effect where as soon as you stop one seller they start up again under a different name or other sellers take their place,” he says. Clearly, proactive measures protecting brands and consumers are required. These can only come from a collaborative effort of brands, marketplaces, regulators and consumers. The latter group can play a part by reporting forgeries and not turning a blind eye because of the rock-bottom prices.

Marketplaces have come in for criticism for failing to deal with counterfeiters. It’s true that progress has been slow, partly because it takes a large investment to catch them all and because there’s not enough incentive to do so; many provide an income stream to the sites that host them through the fees they pay.

But the biggest players have recently stepped up efforts to combat the crime. Notably Amazon and Alibaba have responded to criticism with action.

“Amazon is broadening its anti-counterfeiting programme by letting brands register their logo and IP with the marketplace in a bid to make counterfeit products more easily recognisable, which could be a significant step in the anti-counterfeiting movement,” says Helen Saunders, head of intelligence and operations at INCOPRO, a business helping brands protect their IP.

Mr Smith adds: “Amazon has a new scheme called Brand Gating, where certain brands cannot be sold on their platform unless you produce receipts from the brand owner and a letter confirming authority to sell. eBay runs Authenticate which may be useful for high-value items where you can pay a third-party expert to verify authenticity of a product like a £10,000 watch before buying it online.”

But more can be done, according to Ms Saunders: “These platforms have big data at their disposal; if they employed the technology to better understand the

problem and shared that intelligence with their counterparts, we would finally start to see a real crackdown on the sale of counterfeit products by tackling the manufacturers at the source.”

On the whole, marketplaces need to work harder to counter the damage done by fakes. Brands have the power to penalise those who fail to act by withdrawing genuine products from listings, while governments also have the power to fine companies that indirectly facilitate fraud.

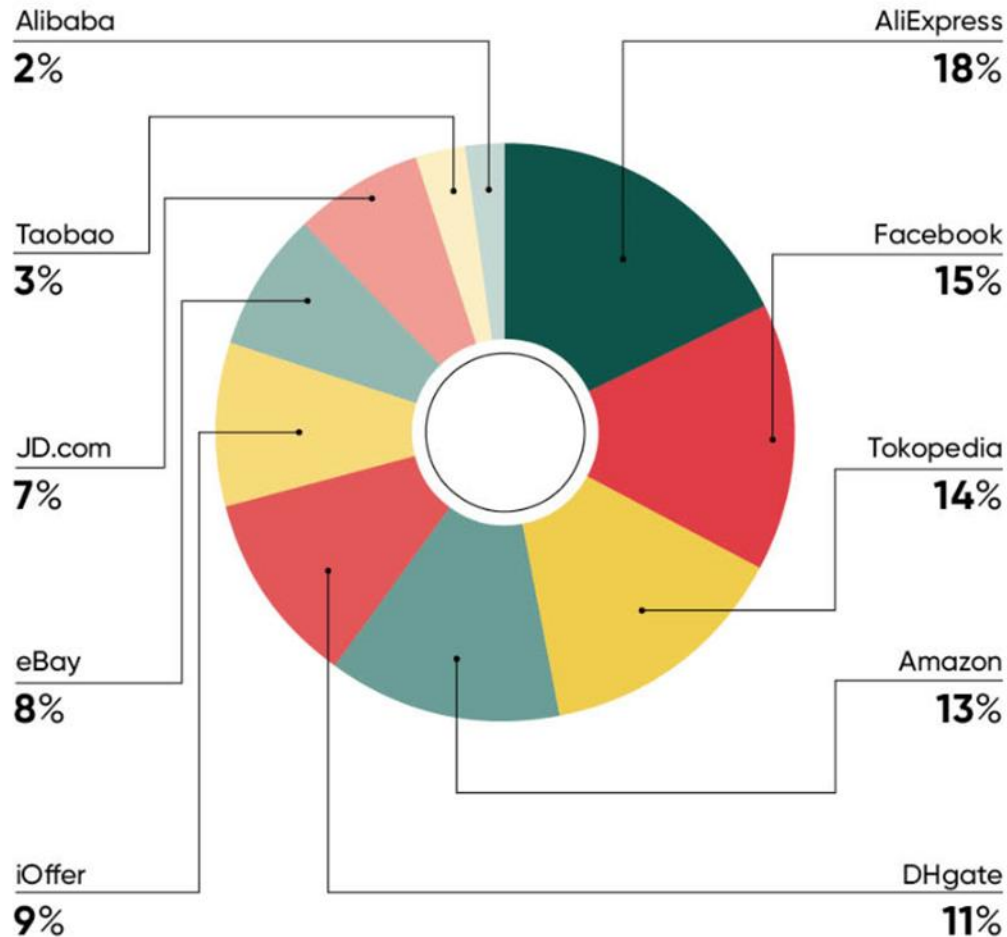
Source: https://www.raconteur.net/business/the-true-story-of-fake-goods-being-sold-online?utm_source=pardot&utm_medium=email&utm_campaign=wed100517

Box 5.2. Alibaba

Alibaba Group has to monitor more than 100,000 brands and ten million small business accounts. The business says: “Alibaba proactively monitors and automatically takes down counterfeit product listings on our platforms using industry-leading technology. In the 12 months ending August 2016, we removed more than 380 million IP-infringing product listings and closed approximately 180,000 storefronts run by counterfeiting criminals. We also work with law enforcement in offline investigations, providing them with evidence which they use to arrest and jail counterfeiting criminals. In 2016, we provided 1,184 leads to the police, assisted in the arrests of 880 suspects and the shutdown of 1,419 counterfeiting locations.”

Earlier this year (2017), it launched the Alibaba Group Big Data Anti-Counterfeiting Alliance alongside 20 brands, including Louis Vuitton and Samsung, to promote industry collaboration and the use of big data and technology to stop counterfeiters. Last year it restructured its online IP enforcement tools to create a single Intellectual Property Protection platform, which streamlines the process for rights holders to submit notice-and-takedown requests across all Alibaba’s marketplaces.

Figure 5.4. The Top 10 Websites with the most Counterfeit Merchandise⁴² - Data from Red Points 2017



Source: https://www.raconteur.net/business/the-true-story-of-fake-goods-being-sold-online?utm_source=pardot&utm_medium=email&utm_campaign=wed100517

87. It should be noted that the counterfeit merchandise noted above concerns all products, in particular the high-cost brands, and not just EEE, although high value products such as iPhones and tablets are reportedly a significant part of the issue. While the particular figures (Figure 5.4) have not been investigated further, a telephone discussion with Carol Garrett of Suffolk County Council Trading Standards (who also works in the capacity of Border Control Market Surveillance) confirms the general problem in that online direct sales into the UK are a major threat. It was noted that the CE Mark “means nothing” in that it is a self-declaration and often goods do not meet the required standards, in terms of safety or otherwise. It was also noted that UK Trading

⁴² https://www.raconteur.net/business/the-true-story-of-fake-goods-being-sold-online?utm_source=pardot&utm_medium=email&utm_campaign=wed100517

Standards do have a ‘non-food products’ budget for such studies in the market surveillance context.

88. Various online forums indicate other types of illegal activity that are ongoing. Marking parcels as samples or as used items is one way that products are sold without paying import duties and VAT⁴³. Box 5.3 provides a few examples found online.

89. There is also evidence of small scale imports of electronics on certain forums⁴⁴:

Box 5.3. Extracts from online forums

“As to avoiding the tax I don't know how it can be done legally. I have seen parcels of books marked as samples even though they were charged for. This seems a bit crooked to me but might be a valid loophole.”

“When we buy from abroad we always ask them to put on the paper work either 'used' or 'second hand' and luckily we have never been charged any import duties ever. Try it, it may work for you too.”

“I am often asked to lie on customs forms about the value. I understand why you do not want to pay the tax; you have seen that I sell items for half the lowest UK retail and the VAT/duty will be offsetting that advantage.”

“I have to say, the supposed illegality does not worry me. However I would be ineligible for full value insurance were the package to go missing since it was underinsured. So I am a bit wary of doing this.”

“Now when I buy I ask them to mark as a gift and not exceeding a value of £35, and I always e-mail them to say that I accept that if my parcel was lost then I realise I can only be reimbursed for the insurable value. It isn't a lie as such as the item purchased is a gift, only not one the sender paid for.”

“Hi guys, I already got the first retail box 2 weeks ago. It arrived safe and was not questioned. I didn't pay any tax, and hoping it'll be the same in the incoming orders. Thanks for your sharings.”

“I used to import items from China for my Shop but found that on a number of times the items arrived damaged or not as described. Plus once we had paid the VAT 20% and Duties we may as well have brought them in the UK in the first place.”

90. It is worth noting that a stay-at-home father, Gregory Allnutt, was jailed in the UK for avoiding paying VAT on £4.7million-worth of electrical goods he sold on eBay,

⁴³ <http://forums.moneysavingexpert.com/showthread.php?t=34822>

⁴⁴ <http://www.ukbusinessforums.co.uk/threads/importing-electronics-from-china.173890/>

selling cut price electrical goods on the internet. Setting up a company called Shapewise to sell nutrition products, instead he bought tax-free electrical goods from the European Union through online site Pixmania before selling them at a profit, undercutting legitimate sellers.

91. Finally, illegal trade in WEEE is adding further complexity to the issue. A recent report by INTERPOL and the United Nations University finds about two thirds of WEEE occurring in the EU is being mismanaged or leaving the EU illegally ().

Box 5.4. Illegal WEEE trade in the EU

1. A recent project “Countering WEEE Illegal Trade (CWIT)” offers the most accurate picture for the EU as a whole. In addition to mismanagement, the CWIT project revealed cases of fraud, tax evasion and money laundering, demonstrating the availability of financial crime charges in dealing with offences.

2. The following text summarises the press release for this 2-year study:

“Mismanagement of discarded electronics within Europe involves a volume 10 times that of e-waste shipped to foreign shores in undocumented exports, according to a comprehensive 2-year investigation into the functioning of the used and waste electronics market. The project found that in Europe just 35% (3.3 million tonnes of 9.5 million tonnes) of used (but still functioning) and waste electronics and electrical equipment discarded by companies and consumers in 2012 wound up in official collection and recycling systems. The other discarded electronics - 6.2 million tonnes in all - was either exported, recycled under non-compliant conditions or simply thrown in waste bins.

The study estimates 1.3 million tonnes of discarded electronics departed the EU in undocumented mixed exports, of which an estimated 30% (about 400,000 tonnes) was electronic waste; and 70% functioning equipment. More than 10 times the 400,000 tonnes of e-waste exported - some 4.7 million tonnes - was wrongfully mismanaged or illegally traded within Europe itself. And, the research found, even in the few EU member states with robust, effective reporting systems, monitoring of de-pollution efforts and up-to-standard treatment conditions are not always securely in place.

The widespread theft of valuable components such as circuit boards and precious metals from waste electronics results in a serious loss of materials and resources for compliant waste processors in Europe. This annual estimated loss is valued at between €800 million and €1.7 billion (US \$877 million to \$1.86 billion). Avoided costs of compliance with EU regulations (mainly de-pollution), is estimated at €150 million to €600 million (US \$165 million to \$658 million) annually.

National surveys by INTERPOL show that on average each year only 2,000 tonnes (0.5%) of EU e-waste exports were reported as having been stopped in operations leading to some form of sentencing, administrative fines or civil penalties. The report notes that 30% of EU members have not implemented the stringent regulations required by the latest version of the WEEE directive and that typical national penalties for infractions at the national level are not high enough to have deterrent value. As matters stand, prison and financial penalties for illegal e-waste trade vary greatly.”

5.3. Estimating the Potential Extent of Free-Riding

92. While many of the stakeholders consulted in the WEEE sector agree that online sales are an increasing challenge for EPR systems, there are very few estimates of the actual scale of the EEE online free-riding issue and where they do exist they are essentially guestimates.

93. A study by WRAP/Valpak for the UK Government for example⁴⁵ estimates that in 2015, EEE placed on the market (POM) registered to the Environment Agency accounted for 88% of total POM, and that 133,000t (7%) is estimated to be placed on the market by unregistered companies (free riders). The report suggests that this could be because “they are unaware of the regulations e.g. small companies based abroad selling through market place sites may not be familiar with UK regulatory requirements”. The assumption is that much of this is made up by PV panel producers who are less aware of the regulations since they have only been obligated for two years. 99,000t (5%) is estimated to have been exempt from the scope of the regulations in 2015 and hence 7% overall implies 2% in addition to PV for other product groups. These numbers are very speculative however and to be treated with caution.

94. The UK Department for Environment, food and rural affairs (Defra) notes⁴⁶ that for the UK this is a smaller challenge than for some other countries due to the fact that it is a large market with all of the large players (including Amazon) present in ‘bricks and mortar’ stores and/or distribution centres. That said, it was noted by one stakeholder that the national register of producers only has a very small percentage of overseas companies. Examining the UK public register of producers under the WEEE Regulations found that there are 5,490 in total broken down as follows:

• Number of UK-based producers:	5,153 (94%)
• Number of producers outside the UK:	336 (6%)
– EU	202 (4%)
– US	71 (1%)
– China	7
– Others	56

95. This shows that a significant number of overseas (presumably mostly, if not all, online) EEE sellers are represented, although the fact that only 6% of sellers are overseas, and that a very high proportion of British people buy online from overseas sites (See Section 5.1) implies that there are likely to be a significant number missing. Some of the larger ones, such as Alibaba (China), DHGate (China), Pixmania (France) and Shipito (USA shipping company; technically not a seller), all of which will happily ship EEE to the UK, are not listed for example. It should be noted that some web-sellers may be owned by other companies that are listed, complicating the checking process for enforcement authorities.

96. In the UK, the Government Department for Business, Energy and Industrial Strategy (BEIS) undertakes monitoring of the consumer-facing provisions of the WEEE Regulations (using the Vehicle Certification Agency (VCA) from 2007 to 2014). Retail

⁴⁵ EEE Flows Report, October 2016

⁴⁶ Interview with Graeme Vickery, Senior WEEE Policy Advisor at Defra

stores, both registered with the distributor take-back scheme (DTS) and not, are checked (using a ‘secret shopper’ market research approach) in relation to fulfilling their obligations around consumer information and take back. In January 2015, 45% of non-DTS stores were non-compliant with their obligations and even 24% of those in the DTS (which removes the need to take back WEEE)⁴⁷.

97. In terms of enforcement for distance sellers, during the period April 2014 to March 2015, 605 inspections were conducted (DTS 172, Non DTS 433) and VCA noted that it was particularly challenging to build effective communications with retailers who are not DTS members and that internet enforcement has proved to be “more problematic in one particular area” (although it does not say where). Nonetheless VCA note that enforcement visit figures do reflect a generally positive response by distributors who initially were non-compliant and have since worked with the Agency to achieve compliance.

98. The only other information available is based on previous survey work, the internet evidence noted above and the anecdotal evidence from stakeholders in this study. In a recent Eunomia study for the European Commission⁴⁸ concerning the accuracy of EU waste statistics, the majority of stakeholders thought that the National Registers used by Member States for reporting EEE placed on the market were reasonably accurate. None of the selected representative Member States reported specific concerns regarding this issue and noted that the WEEE recast Directive has helped to harmonise registration and reporting obligations for producers.

99. Feedback from a few stakeholders, however, suggested that they believed that the data was only ‘fairly’ accurate and that it did not account for:

- Companies who placed small volumes of WEEE on the market and therefore fell below the minimum thresholds set out in the national legislation of some countries; and
- ‘Free riders’ who are illegally placing products on the market without registering with the appropriate authorities.

100. In the European Commission study⁴⁹, some stakeholders stated that private sales, through ‘distance sellers’ online, are the most significant issue as the seller is generally not registered and there is no physical entity in the country since the EEE comes straight to a customer’s property via a courier or postal service. It was recognised that this was a growing issue due to increasing online sales. It was suggested, however, that the absolute tonnages being imported through private sales was still minimal compared to the total amount of EEE PoM across the EU.

101. Several stakeholders in this current OECD study expressed the view that the main issue is with the smaller online and specialist EEE sellers and those with their legal

⁴⁷ The Waste Electrical and Electronic Equipment Regulations; VCA Enforcement Report for BIS April 2014 to March 2015

⁴⁸ European Commission (2017), Study on Waste Statistics – A comprehensive review of gaps and weaknesses and key priority areas for improvement in the EU waste statistics; Eunomia

⁴⁹ European Commission (2017), Study on Waste Statistics – A comprehensive review of gaps and weaknesses and key priority areas for improvement in the EU waste statistics; Eunomia

entities in Asia. Alibaba.com, for example, is a very large online seller with six separate platforms and several legal entities in China.⁵⁰

102. What has become apparent in the course of this OECD study, is that even the biggest platforms, such as Amazon, do not conform in every jurisdiction with EPR for WEEE. Seemingly having a reputation to protect is not always enough. It was noted by the Canadian stakeholders that even the well-established sites with a physical presence in Canada sometimes do not fully meet their obligations and auditing is required (In Canada and the USA) to check and bill additional charges.

103. Furthermore anecdotal evidence from stakeholders during meetings in Bern and Flanders suggest that several EU countries, including Portugal, do not have Amazon registered under their WEEE EPR schemes at all despite approaches to join. . A representative from the PRO Amb3E noted that “Amazon is not registered in Portugal with either PRO (Amb3E or ERP). Amazon does not have any warehouse in Portugal, but we are aware that they do have a fulfilment centre in neighbouring Spain. To our knowledge none of the other major internet sales platforms, such as Ebay, Gearbest, Alibaba, etc. are registered with a PRO in Portugal.”

104. While enforcement is more problematic wherever there is no ‘bricks and mortar’ presence and no legal entity in the countries, there is not always a correlation. For example, it is noted that Amazon is registered with Recupel in Belgium, despite having no physical presence there. It is also worth noting that many of the larger online platforms host many other sellers. For example, whilst around 50% of Amazon’s sales are direct it also acts a market place for hundreds if not thousands of third party sellers. eBay is of course almost entirely for ‘other’ sellers (although eBay is registered under a UK PRO).

105. The challenge is likely to be far greater in certain WEEE categories than others. Recolight, the UK compliance scheme that specialises in lighting lamps, notes the following:

106. “We believe that Amazon, while registered with ERP as the UK PRO, only declares its own brand EEE products. This leads us to believe that the level of free riding taking place may be very high, our estimate being 2,500 tonnes or more of UK Category 13 per annum through Amazon sales alone. Given that the 2015 tonnage of household EEE in UK Category 13 was 11,413, this could represent over 20%. LED lamps are much more robust than previous technologies (incandescent and CFL) and are also relatively light weight. That makes LED lamps ideal for distance selling, and this is a major reason for huge growth in online sales.”

107. In terms of who is placing the products on the market, Recolight note that Amazon use the phrase “Sold by [company name] and fulfilled by Amazon.” While not confirmed, we understand that the contractual arrangement with the overseas supplier is apparently such that the supplier is responsible for the import of the product and delivery through to the Amazon warehouse. Consequently, while the sale is being made through the Amazon platform, and fulfilled via their warehouse, the legal responsibility still lies

⁵⁰ Interestingly it posts an “INTERNATIONAL LAW ENFORCEMENT INFORMATION REQUEST GUIDE” on its website although this relates to requests for platform user information but not in regard to other aspects of its trading obligations⁵⁰, although it does reflect the complexity of dealing with a legal entity in the PRC.

with the overseas supplier. Even where there is a physical in-country facility with a legal entity, there are perfectly legal loopholes that can be exploited.⁵¹

108. Given the various forms of information noted above, it is clearly not a simple task to estimate the true extent of online related ‘free riding’ in regard to EEE sales, even in the EU, with many factors at play. However, some form of informed and conservative estimate can be made. Assuming that online EEE sales are approximately 30% of all EEE sales and that 10% to 30% of these sales are with unregistered ‘free-riders’⁵², (that may be inside or outside the territory in question), that would equate to 3% to 9% of the overall EEE market. The scale of EEE counterfeit goods noted in Section 5.2 suggest that the higher figure is not unreasonable, given that counterfeit products are very unlikely to be registered with an EPR PRO. Similarly Recolight’s estimate of 20% of LED lamps not being covered by EPR, as only a small fraction of all EEE (large products being considered far less of a problem), also tends to corroborate a ‘ball park’ figure of 5% to 10% overall.

109. Eurostat data for 2014⁵³ indicates that about 9.2 million tonnes of EEE was put on the market in the EU, hence 5% to 10% would be 460,000 tonnes to 920,000 tonnes; very significant tonnages even in relation to the overall wider illegal WEEE picture noted in Section 4.5.

Impact of Online Free Riding in Smaller Countries

110. The scale and the impact of online free-riding appears to vary greatly from one country to another. It appears that smaller countries, states and provinces, and those with high taxes on EEE, suffer disproportionately from the effect of overseas and online sales of EEE. The Swiss example is a case in point.

111. Switzerland has a voluntary EPR system with three PROs, one for ICT, one for lighting and one for other products. An Advanced Disposal Fee (ADF) is charged via the retailers and occasionally adjusted to reflect the costs of WEEE recycling. Buying outside of Switzerland, for example in Germany or France has always been common as the borders are easy to cross with few customs checks. Online shopping makes the situation even easier.

112. As a consequence the WEEE recycling finances have been dropping (by 50% for one PRO) but the amount of WEEE has not, creating a crisis in the system as funds are inadequate to do the job required. Increasing the ADF would only increase the move to online and other non-Swiss purchasing. It was suggested that having a mandatory requirement to join a PRO would deal with about 60% of the cost deficit, but still leaving a further 40% deficit due to free-riding. Around 10% of all Swiss retail purchases are

⁵¹ It is also interesting to note that Amazon have reportedly recently received a warning over WEEE take back compliance in Germany. This relates to the fact that in Germany, the 400m² WEEE Directive rule on the need to take-back WEEE, is applied to online retailers’ warehouse space as it is to conventional retail store space. <https://www.onlinehaendler-news.de/recht/abmahnungen/27142-elektrog-abmahnung-unterlassungserklaerung-amazon.html>

⁵² Estimated and sense checked with stakeholders – some countries/categories below this figure, some greater.

⁵³ http://ec.europa.eu/eurostat/statistics-explained/index.php/Waste_statistics_-_electrical_and_electronic_equipment

abroad and 29% of the ICT and consumer electronics market is online, although the proportion of EEE purchases abroad is likely to be higher than average. Consequently a figure of around 5% is thought to be a reasonable estimate. Although it is not known how many overseas sellers are free-riders, this figure supports the rough estimates noted in Section 5.3 above.

113. In Belgium the situation is similar to Switzerland in some ways as there is a history of travelling across the border to the Netherlands, Luxembourg and France to make cheaper purchases, online selling increasing this trend to buy abroad. In addition there are no in-country online distribution centres (as the cost of 24hr operations is too high due to labour laws) making it difficult to make e-commerce companies comply with EPR regulations. It was stated by one stakeholder that CoolBlue, a large online seller in the Netherlands, pays the recycling fees to Recupel (the PRO) in Belgium but does not fulfil its take back obligations.

6. Issues and potential approaches

6.1. Complex and ambiguous regulation

6.1.1. Overview

114. For sellers in other countries, the complexity of regulation must be quite bewildering. A report that Eunomia completed for Toshiba⁵⁴ shows that, even for a large and well-resourced corporation, understanding and dealing with different WEEE obligations in different countries presents a real challenge and concern over the potential for inadvertent non-compliance and the associated business risk. Hence a lot of resources go into checking what needs to be done.

115. Even in the EU where there is one WEEE Directive, there are 28 interpretations of the law and many different PROs, and approaches to registration and financing. The USA has 26 different sets of state regulations and Canada has 9 provincial laws (although only one national PRO). The clearer and more harmonised regulation is the simpler it is for producers and hence the lower the risk of accidental free-riding.

Ambiguity in Scope

116. A lack of clarity in scope of EPR rules is one aspect of this complexity that affects the potential for confusion and free-riding. To use the EU as an example, the scope of the original WEEE Directive with its 10 categories and various exemptions caused considerable doubt in some areas over what was considered in and what was out of scope. In addition to EU guidance, some Member States also produced guidance. The UK notably developed a ‘decision tree’ and other guidance to help potential producers establish if their products and operations were in scope.

117. The situation in the EU has not been helped by inconsistencies between the WEEE and RoHS directives and the use of the ‘binding list’ of products that are subject to the WEEE directive (Annex II of the old Directive and annex IV in the recast), which was/is non-exhaustive and hence, while helpful in some ways, could potentially be seen to exclude products not represented.

118. In addition there is some uncertainty around the difference between B2C equipment and B2B equipment. Often equipment, such as a laptop, may be used in both a domestic and professional context and the producer needs to define which is the intention as B2B equipment is not part of the mandatory targets or financing arrangements.

119. While the Recast Directive becomes more open scope than before, post 15th August 2018, there are still exemptions that are open to interpretation and hence this issue will not necessarily lessen.

⁵⁴ Add reference

Box 6.1. Registration Requirements and Authorised Representatives

Having a large number of PROs in a country, and the potential for independent registration by producers, can complicate things further for distance sellers. From an enforcement point of view, having a single and publically available electronic register of producers in a country, state or province is the critical thing as it allows registered retailer peers, and the authorities, to check whether distance sellers are represented.

Some stakeholders view the Authorised Representatives (ARs) as an unnecessary additional layer of admin where there is an existing and strong PRO/s. An AR can be helpful, however, in terms of supporting overseas sellers to do the right thing, particularly where they can act across several countries, and it has been pointed out that some ARs have been proactive in seeking clients in other countries including China. In this sense the ARs are taking on an awareness raising role, for business reasons, that may otherwise fall to regulators. It is also pointed out, however, that some EU Member States have few if any ARs as the role can involve taking on liabilities which can be risky if overseas sellers do not comply in providing data.

It is also worth noting that the recast Directive is complex and with some ambiguity in regard to ARs as Articles 16 and 17 seem somewhat inconsistent; 16 suggests that any distance seller needs an Authorised Representative in an MS it is selling into and refers to Article 17, but this only refers to those selling from one MS to another as needing an AR. Interpretation of this AR requirement seems to vary across Member States.

6.1.2. Good practice

120. Firstly it must be noted that regulations have to be explicit about the producer including distance sellers and online platforms in general. Electronic Product Stewardship Canada (EPSC) notes that several Provinces have introduced language in regulation that has helped with *out of Province* sellers by identifying Stewards as “a person who:

- (i) sells, offers for sale or distributes unused, obligated electronic products in the Province,
- (ii) is the owner or licensee of a trademark under which obligated electronic products is sold or distributed in the Province, whether or not the trademark is registered, or
- (iii) imports the obligated electronic product into the Province for sale or distribution.”

121. The Irish WEEE Regulations are far more explicit and demanding, in regard to the obligations of distance sellers, than typically found in other EU Countries, having

separate clauses on distance seller obligations. In particular the Irish WEEE Regulations require distance sellers to:

- Still fulfil their take-back obligations;
- Display their WEEE producer registration number on their website; and
- Retain records for at least two years of the amount of WEEE taken back each year.

122. The Irish also have very clear guidance for distance sellers on their website. In terms of scope issues, the definition of Dual Use B2C Equipment has also been clarified as “waste from EEE likely to be used by both private households and users other than private householders, shall in any event be considered to be WEEE from private households”.

123. The UK also has helpful Government Guidance Notes, excerpts from which include the following:

124. A distance seller (e.g. an internet retailer, mail order retailer or a tele-sales retailer) also needs to fulfil the obligations of providing free take-back facilities for consumers of EEE. This can be done by:

- Joining the DTS; or
- allowing these sales to qualify for in-store take-back through one of their local stores (where these exist); or
- Providing the customer with an alternative route for free take-back.

125. Distributors who are distance sellers must tell consumers how they can dispose of WEEE. This can be done through their mail-order adverts, website content, and/or through leaflets included with purchases. Offering “collection on delivery” does not release distance sellers from their take-back obligations under the Regulations in the event of a consumer choosing to return WEEE themselves.

126. The UK also has an example of good practice in that the UK WEEE Regulations explicitly state that: “A producer who is established in the United Kingdom and who places EEE onto the market in any Member State other than the United Kingdom by means of distance communication will comply with their obligations under the Directive in that Member State.” This means that if the regulators from another Member State point out that UK online sellers are not meeting their obligations elsewhere, there is a legal means to prosecute them in the UK.

127. Another stakeholder noted that if there was a true Individual Producer Responsibility (IPR)⁵⁵, which is becoming increasingly possible under the Internet of Things (IOT) using product tracking, that the seller/importer could be dropped as the producer altogether, the charges applying only to the OEM/brand owner (the way the charges work in some US states already). OEMS and brands are far fewer in number than sellers of course, and are generally large corporations with reputations to uphold.

⁵⁵ Under individual producer responsibility, producers are directly and individually responsible for end-of-life products, rather than collectively through producer responsibility organisations.

6.2. Enforcement and prosecution

6.2.1. Overview

128. As concluded in earlier OECD work on EPR, there is a lack monitoring and control by public authorities and of related enforcement mechanisms to ensure effective operation of EPR schemes.

129. As noted earlier, there are various forms of illegal activity related to imports of EEE into OECD countries and it falls on various sets of regulators to track, prevent and prosecute counterfeit goods, CE mark standards, import duty/VAT evasion etc. including customs, trading standards and tax authorities. Tracking free-rider EPR activity is an additional issue that normally falls on the environmental regulators who often have very limited resources and many issues to deal with, including various forms of waste crime and non-compliance with other environmental regulations.

130. There are literally hundreds, if not thousands, of web sellers of EEE globally and hence tracking their activities is a major challenge. The key issue is the level of resource it takes to track online free-riders, particularly where they are not in the same jurisdiction. In most cases the authorities in one country, US state or Canadian province will have no jurisdiction in another and hence it is generally not possible to investigate or prosecute in another territory directly. As pointed out by more than one stakeholder during the study, action often requires bilateral good will as international law enforcement agreements would not cover such things as environmental charges.

Box 6.2. Irish EPA

The Irish EPA noted that they would only ever consider investigating web site companies in the EU and have only ever prosecuted one company in Ireland to act as a warning to others. Resource constraints are such that only 80 web sites have been investigated in 2015 with the same number planned for 2017. It was noted that chasing companies in China or the US would never be considered due to the likely difficulty of obtaining a positive outcome versus the effort that would be required.

A national authority can, however, approach counterparts in other territories to ask for their assistance in chasing a web company that is based there. This may not, of course, be their priority and in any case the law may not even allow a prosecution of illegal activity in a different territory (although this is possible as noted in the UK good practice example in 6.1). The only lever is often the offer of reciprocal support should that be needed.

In Belgium Recupel (the WEEE PRO) report that they are able to undertake auditing in Luxembourg and NL for example, and that all of the biggest online players are registered, although it is understood that some do not fulfil their takeback obligations. The Belgium environmental authorities (OVAM) are investigating around 50 companies at present but it was noted that very few will require legal action. The Belgium authorities work with German and Dutch counterparts who assist investigations. OVAM cannot shut down a web site in Belgium for non-compliance but they can impose fines on a Belgium legal entity. Again it was noted that it is the smaller sellers outside of Europe that present the greatest difficulties, it often being hard to even find the correct legal entity in China and certain other countries.

131. What is apparent is that each country, state or province has similar enforcement issues and the regulators in each are having to independently investigate potential free-riders which are often the same companies. This creates a lot of inefficiency in an area that is already very resource constrained.

132. Finally, a recent report for the European Commission on waste data accuracy in the EU⁵⁶, noted that governments have little incentive to tackle the issue of free-riding as it means that there is a greater quantity of ‘unreported’ WEEE to collect, which makes the achievement of the targets easier. It is clearly in the interests of legitimate producers, however, to help the authorities identify free-riders so as to reduce compliance costs and illegal competition.

⁵⁶ European Commission (2017), Study on Waste Statistics – A comprehensive review of gaps and weaknesses and key priority areas for improvement in the EU waste statistics; Eunomia

6.2.2. Good practice

133. Given serious resource constraints, several stakeholders noted that it is important to use intelligence-led risk-based investigation and enforcement rather than a ‘scatter-gun’ approach. In Ireland for example, the EPA reacts mainly to web-sites that have been brought to their attention by legitimate and registered peers (i.e. sellers in Ireland) or by the authorities in other EU countries. Assuming that the company in question is not registered, directly, via a PRO or through an authorised representative (in the EU), then these investigations would be prioritised according to:

- Where the legal entity is based (e.g. China potentially being put in the ‘too-difficult’ box)
- The popularity of the website (i.e. its estimated sales volume)

134. Ideally the national/state authorities should work together. In Australia for example, the Borders and Customs Agency has a statutory duty to provide data to the Government authorities overseeing the WEEE EPR scheme so as to help ensure that all importers are registered. Given the wide range of related illegality and tax evasion issues, it seems imperative that customs agencies work closely with EPR scheme operators.

135. In addition it would be far more efficient for supra national bodies, in the case of the EU, or national, in the case of the US and Canada, to work on EPR free-riding issues, being guided by national/state authorities but coordinating activities so as to reduce the overall amount of work required to investigate online web-sellers. For example, it may be that German, Dutch and UK regulators are all simultaneously investigating the same online seller whilst only one needs to, if the findings were shared. In the EU the European Environment Agency could be a suitable organisation to act in this co-ordinating role. For wider geographic coordination, the OECD could be a suitable place to provide this function.

6.3. Awareness raising

6.3.1. Overview

136. It seems likely that, aside from the companies involved in counterfeit products and deliberate evasion of import taxes and VAT, that much of the free-riding is down to ignorance amongst e-commerce sellers. Taking the EU as a market example, while there is no excuse for the larger companies with operations based in the EU, why would a Chinese or US website necessarily be aware of or concern itself with each of the EPR requirements in each of 28 EU Member States? Similarly, would a small web seller in the EU have the resources to ensure that, should any US shoppers use their site, they are meeting their responsibilities in the relevant US states?

137. For this reason there is a consensus amongst stakeholders that proactive awareness raising is required as well as regulatory enforcement. EPSC in Canada, for example, noted that EPR free-riding through online sales should be addressed through peer pressure and strict enforcement, but that this should be combined with education of internet sellers.

6.3.2. Good practice

138. It is understood that some of the larger EU PROs, notably ERP (the European Recycling Platform), are proactively seeking out web sites in the Far East and in some

cases travelling to visit the companies operating them. In addition, it is understood that the Authorised Representatives in Europe are proactively seeking out free-riders so as to recruit them. By creating a business opportunity, these private companies are willing to take on an awareness raising role outside their own countries so as to attract new business and (in the case of the PROs) to ensure that they offer the best deal for their other members. This therefore helps to reduce the burden on the enforcement side.

6.4. Website practices

6.4.1. Overview

139. Some websites selling EEE, in EU countries and China for example, will ship to other countries with no questions asked and no fees or import duties and sales taxes mentioned, let alone EPR fees. Some web-sites have no associated address shown and contact is often only possible with customer services by e-mail via the web-site.

140. Some EU and non-EU websites do make efforts to prevent shipping overseas (see BestBuy example in Box 6.4 below) although only one –Pixmania - was found (in a short search of some well-known sites) that specifically mentions the WEEE EPR fees (Box 6.3).

Box 6.3. Pixmania: Funding the recycling process

Pixmania appears to be one of the few online sales platforms that show the ‘visible-fee’ in its billing and states the following:

“To cover the cost of collecting, removing, processing, storing and recycling waste electronic and electrical equipment, the price of each product now includes a sum specifically for this purpose. This sum covers the future cost of recycling the product. It is paid directly to an accredited organisation responsible for processing this type of waste. The organisation decides the amount due for each product, and depends on the type of product you're buying. Additional criteria are then used to evaluate the amount of material to be recycled, these can include the weight of the product, the capacity of a fridge or the screen size of a television or monitor. A price breakdown is given for all of the products on our website that are subject to this charge. You'll see three different prices: the price of the product, the WEEE charge and the total price of the product including all taxes.”

Pixmania appears to be active in 14 European countries with various web sites including Pixmania.com and national sites. This information seems to be shown on all Pixmania sites even though the WEEE EPR funding arrangements and charges differ in each EU country. A request was made to clarify this information but there has been no response from Pixmania.

Pixmania itself has quite a complex history. Once known as Fotovista, Pixmania was a French-based e-commerce website, founded in 2000, with turnover of over €300million in 2013. Until 2013 it ran bricks-and-mortar retail stores in Europe but now only operates online. Pixmania was majority owned (77%) by the British Dixons Retail plc (formerly DSG International plc) from 2006, selling it on to German-based holding company Mutares in 2013.

Source: <https://www.pixmania.co.uk/edito/european-tax/57e3e7de668e6313c313520f>.

141. As noted earlier, it would appear that Amazon in some cases quite legally avoids EPR and other obligations even when present in a country by making sure that they are not the seller or importer under EPR regulations; only the fulfilment company, even though products are sold from the Amazon web site and are picked and delivered from an Amazon warehouse.

6.4.2. Good practice

142. There is good practice in terms of helping to prevent direct private sales into other jurisdictions. Some web sites, particularly in the USA, will not ship directly to countries

other than the US and its territories. The leading US EEE seller explicitly assumes that international orders are intended for use in the US⁵⁷ (Box 6.4).

Box 6.4. BestBuy.com, international orders

International Orders: We can ship BestBuy.com orders to:

- The 50 United States; U.S. Virgin Islands; Guam; APO/FPO addresses (military)
- During checkout, enter the phone number of the person you're shipping to.
- International orders are intended for use in the U.S., and it is assumed that products will be used in the U.S.
- Best Buy does not ship to known freight forwarders.
- Tax manifestos and sales tax refunds are not available for these orders.

143. From a consumer perspective, and indeed a PRO or regulator investigating non-compliance, it is often not clear whether a web site is or isn't legitimate. As noted earlier, Ireland at least requires that any website that's sells EEE must show the WEEE producer (or AR) registration number. This would potentially be useful for PROS and regulators rather than consumers.

144. Alongside the EPR registration number it would therefore also be useful to have a symbol that reflects compliance in a particular territory. An example is provided in Box 6.5.

⁵⁷ <http://www.bestbuy.com/site/help-topics/international-orders/pcmcat204400050019.c?id=pcmcat204400050019>

Box 6.5. SafeShops.be code of conduct

There is a Belgian quality label for web-shops and several EEE sellers are using it. SafeShops.be is an e-commerce label that recognises web shops that meet a set of principles:

- Respect your business terms
- Provide correct information about payment and delivery
- Comply with warranty terms
- Have a clear complaints procedure
- Show respect for your privacy
- Clearly indicate contact information
- Display correct price indications



145. This type of scheme could potentially be extended to also cover certain aspects of regulation including EPR. This approach would, of course, need to be combined with raising consumer awareness of what they need to look for in a legitimate online seller's web-site.

146. Some stakeholders noted that it would be easy to fake the logo and provide a false registration number, however this assumes that these companies are even aware of the EPR schemes and the related obligations. This seems unlikely (given the discussion on awareness above) for at least the smaller sellers and those in the Far East and USA.

147. Some sites for importers provide very clear guidance and support (Box 6.6). It is notable that there is no mention of EPR fees or the need to register if importing EEE.

Box 6.6. Importer site declaration (Shippo)

“When importing with Shippo, we’ll declare your goods to customs and pay the UK Duty and VAT on your behalf to have your consignment released. At this point we’ll have the exact UK Duty and VAT figures and will forward them to your freight invoice. You’ll then pay the Duty and Import VAT along with the shipping via bank transfer, in one fell swoop before delivery! <https://www.shippo.co.uk/faqs/what-duties-and-taxes-will-i-have-to-pay/>”.

148. This type of clarity is what would ideally be seen on all web-seller sites. In this age of ‘big data’ and automatic analysis, it should even be possible for websites to

identify the location of the buyer (through the IP address and if not to use the mailing address), to identify the import duty, VAT and EPR charges payable for that EEE item in that territory (through access to a suitably approved database) and charge the customer accordingly, the fees being passed on to the relevant authorities in the country in question. This may be how the Pixmania site is operating although that is not clear. Alternatively web-sites, at least in the EU, could be required to automatically notify the relevant authorities in other countries when an EEE sale is made in that territory to simplify the regulatory and PRO workload.

149. Whilst delivering items via packaging forwarding companies would potentially get around any such requirement, it would be another step towards full compliance.

6.5. Product levies and customs

6.5.1. Overview

150. A number of stakeholders suggested that it may be possible to simplify the EPR funding arrangements by using an up-front levy (as used in Switzerland and Australia for example) on each item imported into a country, potentially even rolling the EPR fee into Import Duty. In the EU the Single Administrative Document (SAD) is used to declare goods that are moved from one part of the EU to another and must accompany goods throughout the EU⁵⁸.

151. This would then make it a customs issue from an enforcement point of view. This may be something that could be done just for certain classes of small EEE that are known to be more problematic from a free-rider perspective.

152. Another suggestion was that packages, as well as web sites, could be labelled with the EPR registration code and a logo so that customs officials could more easily undertake spot checks and potentially impound products that were not sent by a registered producer. One stakeholder also suggested that rather than having an additional label, WEEE EPR registration in the EU could be an additional requirement under CE marking for EEE products.

153. This approach in general was thought to be too complex on a number of grounds:

- It would require international agreement;
- Products are often inaccurately coded and it would not be obvious that they are EEE unless x-rayed;
- Millions of products cross borders every day and some are containerised making inspection difficult (although spot checks are made of course); and
- Customs officials are already overstretched dealing with more serious issues such as drugs and counterfeit goods.

154. Another option, however, is to link EPR registration directly to VAT registration (see 6.5.2)

⁵⁸ <https://www.gov.uk/guidance/classification-of-goods>
<https://www.gov.uk/guidance/classification-of-goods>

6.5.2. Good practice

155. A number of EU countries make clear the WEEE related obligations in regard to the import of EEE, the UK guidance being found here:

156. <https://www.gov.uk/guidance/importing-and-exporting-electronic-goods>

157. In Belgium, Recupel (the PRO) note that where a company has to register for VAT in Belgium, and they put EEE on the market, they are also required to register with Recupel. In the USA if a company registers for VAT this is apparently⁵⁹ a nexus that also allows state authorities to require companies to comply with other state laws, even if they have no physical legal entity in the state.

158. It is also worth noting that in the USA, the Marketplace Fairness Act was implemented in 2013 granting participating states the authority to collect sales tax at the time of transaction from online/remote sellers following a simplification of their tax laws. In order to make the collection of sales tax from multiple states more straightforward, states seeking collection authority have two options:

- A state can join the twenty-four states that have already voluntarily adopted the simplification measures of the Streamlined Sales and Use Tax Agreement (SSUTA) by becoming a full member.
- States can meet essentially five simplification mandates listed in the bill. States that choose this option must agree to:
 - Notify retailers in advance of any rate changes within the state
 - Designate a single state organization to handle sales tax registrations, filings, and audits
 - Establish a uniform sales tax base for use throughout the state
 - Use destination sourcing to determine sales tax rates for out-of-state purchases (a purchase made by a consumer in California from a retailer in Ohio is taxed at the California rate, and the sales tax collected is remitted to California to fund projects and services there)
 - Provide free software for managing sales tax compliance, and hold retailers harmless for any errors that result from relying on state-provided systems and data

159. States including Wyoming and New York are working hard on legislation to force marketplaces to collect sales taxes on behalf of suppliers selling on their sites and to force sellers to report sales. For example, whilst around 50% of Amazon's sales are direct it also acts as a market place for thousands of third party sellers whose tax habits remain elusive⁶⁰. Historically Amazon (as the largest web-seller) hasn't been forced to collect its sales taxes; however, from 1st April 2017 they have been collecting from all 45 states that currently tax their sales.

160. Third party sellers are often small businesses who claim they cannot easily track where their goods are sold and they are often unaware of the tax legislations. Amazon only collects the amount sellers charge and tacks on a sales tax if a seller asks them to, and when a retailer isn't required to collect sales taxes, states ask residents to pay it themselves on their annual tax filing – something that many people will be unaware of⁶¹.

⁵⁹ Personal communication from Garth Hickle, formerly of the Minnesota State environmental authorities

⁶⁰ Stevens, L. (2017), Next Target for States Seeking to Collect Sales Taxes: Sellers on Amazon

⁶¹ *ibid*

161. Declining tax revenue is forcing US states to look more closely at where they can limit losses⁶² if they can be successful in forcing online marketplaces into collecting from third parties it may be possible to add EPR into the system and help to make buyers and sellers aware of their responsibilities.

6.6. Courier and postal services

6.6.1. Overview

162. It has been noted during the study that the main issue in regard to online free-riding is that there is no legal entity within the country or state in question. The importer is effectively absent and the distance seller is hard to identify and enforcement difficult to pursue. Often, however, distance sellers have contracts with large courier organisations such as FedEx, USP, DHL etc.

163. It has therefore been suggested that such organisations take on producer responsibilities, as the de-facto importer, where the distance seller is not registered in the territory where the parcel is being delivered. This would almost certainly make the courier companies take the EPR issue into account when negotiating contracts with large online sellers overseas, as part of a wider due diligence process, raising awareness.

164. As with the reluctance in some EU countries for ARs to take on the obligations and potential liabilities of producers overseas, courier companies would presumably also want to be sure that they are not taking on additional liabilities when bidding for a courier contract with a web-seller overseas, hence providing a strong motivation to ensure that the distance seller is compliant.

165. It is worth noting that in the case of national postal services, imposing EPR obligations would not be reasonable unless they enter into contractual delivery arrangements with distance sellers.

6.6.2. Good practice

166. The German company DHL is already very involved in EPR systems. DHL has operated WEEE and packaging compliance services in the UK for many years but recently sold these operations to the Landbell Group, the main shareholder in another compliance specialist, ERP⁶³. The idea is to form a 'strategic partnership' to provide a 'one-stop-shop' for all their customers' environmental management and compliance needs. Under this arrangement, DHL will continue to provide customers with supply chain and recycling services through its EnviroSolutions arm, while European Recycling Platform (ERP) will carry out data and compliance services for electrical and electronic equipment, packaging and batteries.

167. DHL also works in Australia to provide a 'Co-regulatory Arrangement' with its EnviroSolutions environmental services offering, and works closely with local councils on the national WEEE collection service on behalf of equipment importers and local manufacturers.

⁶² *ibid*

⁶³ <http://www.letsrecycle.com/news/latest-news/dhl-sells-weee-and-packaging-compliance-work-to-erp/>

168. In Flanders (Belgium), DHL and Bpost, the Belgium postal service, are taking part in a take back trial-run by VIL, a logistics innovation and research centre), whereby on delivery of an item of EEE, they are taking back small WEEE. This is placed in a plastic bag (one for hazardous, one for non-hazardous) and back-hauled to the nearest Distribution Centre where it is placed in pallet boxes and collected by Recupel for WEEE treatment. The handling cost is estimated at between €6 and €8 per item. VIL noted that they believe it is a complex and costly process, given that other free disposal routes are available for consumers.

169. It is worth noting that, given the wide range of commercial activity by DHL in the ERP space, it is not too much of a leap to see couriers taking on additional responsibilities for distance sellers. In fact, as noted earlier, ERP (now linked to DHL as noted above) is also being proactive in engaging with distance sellers to raise their awareness and get them signed up. Vertical integration as here, between courier and PRO, provides an added incentive to be proactive in reaching out to distance sellers, as there is potential commercial benefit in providing both courier and environmental compliance services bundled together across the EU and beyond.

6.7. The consumer

170. Finally it is worth noting the potential role of the consumer. Consumers can play their part in being aware (with the help of communications campaign perhaps) of what to look for in a 'legitimate' EEE web-seller as noted earlier, however it was generally felt by stakeholders that this would be a weak driver of distance seller behaviour; particularly given that many people are willing it seems (Section 5.2) to even buy fake goods if they are sufficiently cheap.

171. While producer responsibility aims to make the producer pay for WEEE collection and recycling, the costs are often passed down to the consumer, either shown as a 'visible fee' or otherwise. Only in the most competitive markets are the costs absorbed, to some degree or other, by the suppliers.

172. Consequently it has been suggested, by the EPSC in Canada, that a far simpler and less bureaucratic approach to EPR charges would be simply to impose a tax on the users of consumer electronics devices. Given that these devices are now almost all internet devices, this could be done cost-effectively through an additional charge via the Internet Service Providers.

7. Possible means of action to address free-riding in the context of online sales

173. Online selling of Electrical and Electronic Equipment is certainly of growing concern in the WEEE EPR community in terms of its impact on free-riding, both in relation to financing of WEEE recycling and in regard to physical take back. Having explored the issues with a wide variety of stakeholders (mostly in the regulatory and WEEE PRO field), the following possible means of action have been identified.

Regulation and enforcement:

- Continue to focus on simplification and harmonisation of Extended Producer Responsibility regulation, with very explicit obligations for online sellers in particular (not just distance sellers) and clear and simple guidance in plain English. In the EU, the further revisions to the WEEE and Batteries Directives, should take into account this growing problem and take more specific action.
- Require a single national/state electronic register of producers (and Authorised Representatives in the European Union) and the requirement for mandatory membership of a Producer Responsibility Organisations (directly or via an Authorised Representative). The trading name of the web site should be required for registration, as well as the legal entity name, to assist compliance checks.
- Build into legislation the ability to prosecute a company for illegal action in another country to facilitate enforcement (as per the UK example).
- Consider introducing additional enforcement powers under EU and other national legislation to prevent illegal online selling, for example through obtaining a court ruling to close down websites quickly and cheaply.
- Place a requirement on multi-seller platforms to notify their Electrical and Electronic Equipment sellers that EPR registration is required and what they need to do, and to exclude those sellers that do not conform.
- Require web sites selling Electrical and Electronic Equipment to show the Producer Responsibility Organisations registration details for themselves (or the AR acting on their behalf in the European Union), to clearly display a logo to demonstrate compliance and to provide the address and contact information for the legal entity behind the site. This could potentially be combined with a requirement to show import duty and Value Added Tax details related to a purchase. This would provide a benchmark for all legitimate online sellers (who will be the ones informed of the requirements) so as to provide a simple checking mechanism for enforcement authorities and informed consumers.
- Consider making Extended Producer Responsibility obligations a condition of Conformité Européene markings (European Union) and equivalent.
- Consider placing obligations, including physical take back and fees for recycling, on couriers and postal services in a territory where they have a delivery contract with a distance seller that is not registered and not meeting its Extended Producer Responsibility obligations.
- Investigate the potential for future Individual Producer Responsibility systems, facilitated by the Internet of Things, to provide a simple and accurate means to charge Extended Producer Responsibility fees back to Original Equipment Manufactures/brands, hence avoiding the complexity of identifying and engaging distance sellers.

- Make becoming a member of a Producer Responsibility Organisations a condition of obtaining a Value Added Tax registration for distance Electrical and Electronic Equipment sellers.

Collaboration and Awareness Raising:

- Develop mechanisms, or potentially make it mandatory, for customs, tax and trading standards officials to work in a joined up fashion with the environmental authorities on product regulation and enforcement.
- Co-ordinate enforcement action at the supra-national/national level, e.g. across the European Union, across the United States of America, across Canada, to make enforcement less daunting for individual territories and more cost-effective overall.
- Encourage Producer Responsibility Organisations, and registered producers and distributors, to report any known free-riders to the authorities so as to assist enforcement.
- Encourage, or potentially mandate, Producer Responsibility Organisations and Authorised Representatives to undertake promotional and awareness raising work overseas, and particularly in the Far East.
- As an alternative to legislation on the matter, introduce an Organisation for Economic Co-operation and Development -wide voluntary standard for web sites that includes the measures noted above (Producer Responsibility Organisations registration details; address/contacts; logo), potentially building on the SafeShops.be model.

Annexes

A.1. Research method

174. The work commenced with a wide ranging literature search using known sources, and a broader internet search covering the EU, US, Canada and Australia.

175. Subsequent to the literature search, a workshop was held in Bern on March 10th 2017, supported by the European Commission and the Swiss Government. This workshop was attended by the following:

- Peter BÖRKEY - Organisation for Economic Co-operation and Development (OECD);
- Roeland BRACKE - Openbare Vlaamse Afvalstoffenmaatschappij (OVAM), Belgium;
- Marco BULETTI - Federal Office for the Environment (FOEN), Switzerland;
- Roman EPPENBERGER - SENS eRecycling;
- Mark HILTON - Eunomia;
- Michael HÜGI - Federal Office for the Environment (FOEN), Switzerland;
- Dagmar JENNI - Swiss Retail Federation ;
- Pedro NAZARETH - Amb3E - Associação Portuguesa de Gestão de Resíduos;
- Sylvia RÜTSCHI - Federal Office for the Environment (FOEN), Switzerland; and
- Chris SHERRINGTON – Eunomia.

176. Further meetings were held at VIL (logistics research and innovation) in Mechelen and at OVAM in Flanders on March 22nd 2017, both to discuss the situation and good practice in Belgium.

177. Attendees at these Belgian meeting were:

- Pascal Leroy, Secretary General, WEEE Forum;
- Roeland Bracke, OVAM;
- Peter Lagey, VIL;
- Maya Schmit, OVAM;
- Martine Vanheers, bebat;
- Christel Vermeersch, recupel; and
- Mark Hilton, Eunomia.

178. Further interviews have been held with the following stakeholders:

UK

- Graeme Vickery, DEFRA Producer Responsibility Policy
- Susanne Baker, Environment and Compliance, TechUK
- Sarah Downes, REPIC
- Nigel Harvey, Recolight (UK)
- Carol Garrett, Suffolk County Council Trading Standards (UK)
- Muireann Kirby, Electrical Safety First (UK)
- Carol Garrett of Suffolk County Council Trading Standards

Ireland

- Michael Owens, EPA WEEE Regulation
- Tom Moriarty Dell EMEA Regulatory Compliance Manager

Canada

- Cliff Hacking; President/CEO, Electronic Products Recycling Association (EPRA)
- Shelagh Kerr, President/CEO, EPSC (Electronics Product Stewardship)

USA

- Garth Hickle; EPR Expert, formerly of the Minnesota State Environment Department

179. In addition the following have been invited to participate (via the first workshop) but have not responded or were unable to attend in Bern:

- Amazon EU (Nick Cravhlo, Luxembourg)
- Pixmania
- ERP (John Redmayne); and
- via WRAP (the UK Waste and Resources Action Programme):
 - John Lewis;
 - Vestel;
 - Dixons Carphone;
 - Morphy Richards;
 - Sainsburys;
 - Argos; and
 - Tesco.

A.2. Excerpts from Irish WEEE regulations

180. A Distance Seller sells EEE by means of distance communication directly to private households or to users other than private households in a Member State, and is established in another Member State or in a third country

Obligations - Distance Sellers

13. Where a producer or as appropriate, a distributor supplies electrical and electronic equipment by means of distance communication he or she shall—

(1) if established in another Member State appoint an authorised representative in accordance with the provisions of regulation 10,

(2) register in accordance with the provisions of regulation 11,

(3) notify the registration body or, as appropriate, a third party acting on its behalf at the time of registration that he or she supplies electrical and electronic equipment by means of distance communication and confirm that all such equipment placed on the market in the State complies with the requirements of these Regulations,

(4) upon a request from the—

(a) registration body or, as appropriate, a third party acting on its behalf or,

(b) local authority in the functional area where the registered office or, if not a company, the principal place of business of the producer or their authorised representative is located or,

(c) Agency, undertake to provide it with information that demonstrates, to its satisfaction, that he or she has complied with his or her obligations in accordance with the provisions of Article 12 of the Directive to provide financing for the environmentally sound management of waste electrical and electronic equipment from private households deposited at collection points in the Member State of the European Union where the final user of the equipment resides and is complying with his or her obligations in accordance with the provisions of Article 13 of the Directive to finance the environmentally sound management of waste electrical and electronic equipment from users other than private households.

(5) display the registration number issued to him or her in accordance with regulation 12 on his or her website.

WEEE Management

8) Without prejudice to sub-regulation (3), where a producer or, as appropriate, a distributor supplies electrical and electronic equipment by means of distance communication he or she shall—

(a) ensure that waste electrical and electronic equipment from private households can be returned to him or her at least free of charge on a one-to-one basis as long as the waste electrical and electronic equipment is of equivalent type or has fulfilled the same function as the supplied equipment other than contaminated waste electrical and electronic equipment that presents a health and safety risk unless such contamination is on account of the distributor's liability under the Sale of Goods and Supply of Services Act, 1980 (No.16 of 1980);

(b) place a visible and legible notice— (i) on his or her website or other electronic means of communication where— (a) electrical and electronic equipment being distributed is displayed, (b) the retail price of electrical and electronic equipment is quoted or, as appropriate, (c) the ordering and financial transaction confirming purchase of electrical and electronic equipment is undertaken or, as appropriate, (ii) in each of his or her catalogues, brochures or, as appropriate, mail-shots, indicating that he or she will take back waste electrical and electronic equipment from private households at least free of charge on a one-to-one basis as long as the waste electrical and electronic equipment is of equivalent type or has fulfilled the same function as the supplied equipment together with details of any or every place of business in the State from which he or she distributes electrical and electronic equipment or, as appropriate, an address in the State where he or she takes back waste electrical and electronic equipment,

(c) display the registration number issued to him or her by the registration body on his or her website,

(d) notify customers when distributing electrical and electronic equipment for private households by voice telephony services, including telesales and telemarketing, that he or she will take back waste electrical and electronic equipment from private households at least free of charge on a one-to-one basis as long as the waste electrical and electronic equipment is of equivalent type or has fulfilled the same function as the supplied equipment together with details of any or every place of business in the State from which he or she distributes electrical and electronic equipment or, as appropriate, an address in the State where he or she takes back waste electrical and electronic equipment, and

(e) without prejudice to paragraphs (b) and (d), accept any waste electrical and electronic equipment of equivalent type or which has fulfilled the same function as the supplied equipment— (i) provided that he or she has given at least 24 hours' notice of delivery, by collecting it on delivery provided it is available at its place of ordinary use for immediate collection and at the time of collection is not connected to any electrical, gas or water supply, waste water pipe, or permanent structure, or (ii) where such equipment is not available for immediate return,— (a) on account of less than 24 hours' notice having been given for collection, by arranging for and collecting it within 15 days of the date of delivery, provided that the waste electrical and electronic equipment concerned is not connected to any electrical, gas or water supply, waste water pipe, or permanent structure, and the distributor or producer concerned has given at least 24 hours' notice of collection, or by accepting it at— (I) any or every place of business in the State from which he or she distributes electrical and electronic equipment or, as appropriate, (II) an address in the State, when occupied by the producer or authorised representative or, as appropriate, the distributor concerned or by any of his or her servants or agents.

(9) Without prejudice to sub-regulations (3)(a) and (8)(c), any distributor shall be prohibited from requiring a customer to sign any document or make any declaration stating that any item of waste electrical and electronic equipment is not available for collection. (10) Where a third party distributes electrical and electronic equipment and or facilitates the take back of waste electrical and

electronic equipment on behalf of a distributor, the requirements set out in sub-regulations (3) and 8(c) remain the obligation of the distributor concerned.

Visible Fee

(12) (a) Without prejudice to sub-regulation (11), any distributor who distributes electrical and electronic equipment supplied by a producer who displays environmental management costs shall be required to ensure that such costs are indicated in writing to each purchaser.

(b) Notwithstanding paragraph (a), environmental management costs shall be indicated by the distributor concerned visibly and legibly in writing.

(c) Notwithstanding paragraph (a), where a producer or, as appropriate, a distributor supplies electrical and electronic equipment by means of distance communication that was placed on the market in the State by a producer who displays an environmental management cost in accordance with the provisions of sub-regulation 10, he or she shall, in addition to complying with the provisions of paragraph (b) indicate environmental management costs visibly and legibly in writing. (i) on his or her website or other electronic means of communication or, as appropriate, (ii) in each of his or her catalogues, brochures or as appropriate, direct mail communications.

(d) Notwithstanding paragraph (a), where, for the purposes of or in connection with the distribution by a person of electrical and electronic equipment, the price of the electrical and electronic equipment is stated orally or negotiated by the person or by a servant or agent of the person or is stated on the electrical and electronic equipment or on any container or wrapper in which the electrical and electronic equipment is packed or on a ticket or label attached to the electrical and electronic equipment or to such container or wrapper or in a catalogue or advertisement or in a notice or other document including a receipt, the price so stated shall be stated as a single amount inclusive of any charge made by the producer for any environmental management cost payable in respect of the electrical and electronic equipment.

(e) Without prejudice to paragraph (d), where a price notice, relating to a specific item of electrical and electronic equipment placed on the market by a producer who displays an environmental management cost in accordance with the provisions of sub-regulation (10), is displayed-(i) in a distributor's premises, he or she shall show the retail price of that specific item of electrical and electronic equipment inclusive of the environmental management cost and shall include the following wording- "Included in this price is a contribution to recycling costs of [amount of environmental management cost]",

(ii) on a website or other electronic means of communication by a producer, or as appropriate a distributor, he or she shall, at each point where the retail price is quoted or, as appropriate, the ordering and financial transaction confirming the purchase of such electrical and electronic equipment is undertaken, show the retail price of that specific item of electrical and electronic equipment which shall be inclusive of the environmental management cost and shall include the following wording" Included in this price is a contribution to recycling costs of [amount of environmental management cost]",

(iii) in a distributor's catalogues, brochures or, as appropriate, direct mail communications he or she shall include the following wording in letters not less than 2mm high- "Included in these prices is a contribution to recycling costs", or

(iv) in any advertisement, the distributor concerned shall include the following wording in letters not less than 2mm high- "Included in these prices is a contribution to recycling costs".

(f) Notwithstanding paragraph (d), each distributor shall make available at the point of sale to the purchaser concerned an invoice, receipt or docket which shall state "Price of electrical items includes a contribution to recycling costs."

A.3. Excerpts from the UK WEEE regulations

“Producer” means any natural or legal person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC(e) of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts— (a) is established in a Member State and manufactures EEE under his own name or trademark, or has EEE designed or manufactured and markets it under his own name or trademark within the territory of that Member State; (b) is established in a Member State and resells within the territory of that Member State, under his own name or trademark, equipment produced by other suppliers, a reseller not (a) OJ No. L169, 12.7.1993, p.1. (b) The Directive applies to Norway, Iceland and Lichtenstein by Decision 82/2004 of the European Economic Area Joint Committee of 8th June 2004. OJ No. L349, 25.11.2004, p.39. (c) S.I. 2012/1903 (W.230) to which there are amendments not relevant to these Regulations. (d) S.I. 1991/1220 (N.I. 19) as amended by S.I. 1999/663 and S.I. 2003/430 (N.I.8). (e) OJ No. L144, 4.6.1997, p. 19. 11 being regarded as the “producer” if the brand of the producer appears on the equipment, as provided for in sub-paragraph (a); (c) is established in a Member State and places on the market of that Member State, on a professional basis, EEE from a third country or from another Member State; or (d) sells EEE by means of distance communication directly to private households or to users other than private households in a Member State, and is established in another Member State or in a third country.

Obligation to join a scheme 14.—(1) A producer who is established in the United Kingdom will be a member of a scheme in respect of any compliance period or part of a compliance period, during which he puts EEE on to the market and the compliance period following the last compliance period during which he puts EEE on to the market in the United Kingdom unless paragraph (11) applies. (2) A producer who is established in a Member State other than the United Kingdom and who either— (a) places EEE onto the market in the United Kingdom; or (b) sells EEE by means of distance communication directly to consumers in the United Kingdom will either— (i) appoint an authorised representative in the United Kingdom to fulfil their producer obligations under these Regulations on their behalf, or (ii) comply with the requirements of paragraph (1).

Declaration of EEE producer registration number 21. A producer or where one has been appointed, an authorised representative, will declare either— 23 (a) his EEE producer registration number; or (b) the producer registration number of the producer that he has been appointed to represent; to any distributor to whom he intends to sell, sells, or otherwise supplies EEE.