

Memo on Stakeholder Consultation on Article 10(2) of Directive 2012/19/EU

To:

From: Norbert Zonneveld

CC:

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Background

On 17 October 2014 EERA was invited by the Directorate General of Environment of the European Commission to take part in the stakeholders meeting that will be held on Thursday 30 October 2014 to discuss the adoption of the delegated act on equivalent conditions for the treatment of WEEE outside the EU.

In this document a summary of first review of the EC's proposal is given. It is not a comprehensive document and it should be considered as first observations from recyclers with the intention to contribute to a fruitful dialogue with the Commission and other stakeholders. The review is given in a format of questions with an explanation why these questions are asked.

After the consultation EERA has the intention to consult other stakeholders in order that a joint position can be send to the Commission.

Questions on the draft regulation

Item	Reference	Question	Motivation
1.	Regulation	What is the procedure and the timeline for finalizing this regulation?	What are the deadlines for stakeholders to give comments and how id the decision process (co-decision with involvement of EU Parliament and EU Council)?
2.	Pre-amble	Why is there no reference to the OECD Decision C(2001)?	In regulation (EC) No 1013/2006 is stated: In view of the fact that the Community has approved Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations (OECD Decision), in order to harmonise waste lists with the Basel Convention and revise certain other requirements, it is necessary to incorporate the content of that Decision in Community legislation. The result of this regulation is that hazardous waste (including WEEE)

			cannot be send to non-OECD countries for recovery operations.
3.	Pre-amble	Why is there no reference to EU Members States where standards are legally required?	In NL and IRL the standards are not voluntary but legally required.
4.	Article 1 (b) (i)	Why is there no particular reference made to article 11 and Annex V of the Directive?	Article 11 and Annex V of the Directive concerns the legal requirements on recycling and recovery rates of product categories. The EN standards and WEEELABEX cover the methodology on how recovery and recycling rates shall be determined and how these rates shall be calculated. Other methodologies (independent verifier), or standards (R2, E-Stewards) do not give guidance to this. So the question is how EU Member States are assured that this is done in a correct way?
5.	Article 1 (b) (i)	Does a verification by an accredited (ISO/IEC 17020) verifier guarantee that operators in a third country comply with the requirements in Art 8, Art 11, Annex V, VII and VIII of the WEEE Directive?	Except for the requirement that the independent verifier should be accredited according to ISO/IEC 17020, nowhere in the document nor in the explanatory memorandum guidance or requirements are given for this verifier in terms of knowledge, training or experience in WEEE treatment in general or of complex treatment processes like cooling and freezing appliances, lamps, handling of hazardous wastes (European Waste Catalogue), etc. The criteria for independence and accreditation only does not give assurance to Member States that proper treatment and proper reporting of recycling and recovery rates are fulfilled by the operator in third countries.
6.	Annex 1 A. European Standards	Why are not all standards and technical specifications that are in the working program of Cenelec and that were approved by the European Commission mentioned?	The list under A is limitative and does not include standards and technical specification (which have the same level of working as EN standards) that were approved by the EC for the work of Cenelec. For instance TS 505625-3.3. General Specification on Depollution or TS 50625-3.4 on End Processing are mentioned. These are crucial normative requirements in order to comply with the Directive.
7.	Annex 1 B.	Why does the commission also refer to the private standards WEEELABEX, E-Stewards and R2?	Private standards can be changed any time without further involvement of the operators that

			are certified according to these normative requirements. This is different for the EN and TS normative requirements. An EN standard can only be changed every 6 years and must be approved by all 33 National Committees. For a TS this is 3 years. This gives much more assurance for Member States that the quality of treatment and reporting is based on an independent level playing field.
7.	Annex B.1. Other standards – 1.	Why is WEEELABEX mentioned?	The industry bodies WEEE Forum, Ceced, Digital Europe, EERA and Lighting Europe agreed in 2012 that the WEEELABEX standard were given to Cenelec. Cenelec has used the WEEELABEX standards as basis for the EN and TS documents. These documents are an improvement of the old WEEELABEX standards. In 2017 the WEEELABEX standards will have ceased to exist. So why referring to old standards?
8.	Annex B.2 R2 2013	How will the Member States control that only products that are in the scope of R2 are being exported?	As is mentioned the scope of R2 is much narrower and the normative requirements are not specific. The Commission and the Member States should make a clear cross reference list of which products in Annex II of the WEEE Directive corresponds with the scope of R2 and which not.
9.	Annex B.3	How will the Member States control that only products that are in the scope of e-Stewards are being exported?	As is mentioned the scope of e-Stewards is much narrower and the normative requirements are not specific. The Commission and the Member States should make a clear cross reference list of which products in Annex II of the WEEE Directive corresponds with the scope of e-Stewards and which not.
10.	Annex B.4	Can PV's be send to operators in third countries that are certified on basis of AS/NZS 5377: 2013?	PV's are not in the scope of the AS/NZS 5377: 2013 standard.
11.	Explanatory Memorandum 2.	Is the BIO Intelligence Service report available?	The document cannot be found on the website of the European Commission. For stakeholders it is important to know what the content of this report is in order to make a fair judgement on the analyses of appropriateness and adequacy of the proposed options.
12.	EM 4.1	Why does the Commission only refer to Art. 8(2) and Annex VII and VIII and note to Article 11 and Annex V?	Article 11 and Annex V of the Directive concerns the legal requirements on recycling and

			recovery rates of product categories. The EN standards and WEEELABEX cover the methodology on how recovery and recycling rates shall be determined and how these rates shall be calculated. Other methodologies (independent verifier), or standards (R2, E-Stewards) do not give guidance to this. So the question is how EU Member States are assured that this is done in a correct way?
13.	EM 4.1	Can the Commission explain why the criteria Implementation Status, Geographical Scope, Scope of WEEE, Provision of traceability, Requirements for treatment including the use of BAT, Nature of Conformity and Evaluation of costs were used for the SWOT and what the relevance of these criteria are with respect to the legal requirements in Art 8, Art 11, Annex V, VII and VIII of the WEEE Directive?	Some of these criteria (like Implementation Status, Geographical Scope, Provision of traceability, Nature of Conformity and Evaluation of costs) have nothing to do with normative requirements that are needed to comply with the WEEE Directive. Since the report is not available it is also difficult to see what the weighing factor is of these criteria in the SWOT.
14.	EM 4.2	Why has the Commission not taken the OECD Decision for waste into consideration?	WEEE cannot be exported to non-OECD countries because WEEE is considered hazardous waste and many of the sub-streams as well (Printed Circuit Board, Batteries, etc.)
15.	Annex Option 1.	How can an independent verifier with ISO/IEC 17020 accreditation but without a required background in WEEE treatment processes make a comprehensive judgement on compliance with Art 8, Art 11, Annex V, VII and VIII of the WEEE Directive and European Waste Regulations especially on hazardous waste?	It is absolutely insufficient that ISO/IEC 17020 of an auditor is the only criterion for approving that European WEEE and sub-streams thereof are being treated by operators in third countries.
16.	Annex Option 2.1	Can for instance copper streams with printed circuit boards coming from WEEE or batteries be exported to operators in third countries?	The document does not mention a number of the EN and TS documents that are or have been developed under Mandate 518. These documents contain essential requirements for the environmental safe treatment of WEEE and sub-streams thereof.
17.	Annex Option 2.2 (i)	Which version of the WEEELABEX is referred to?	The last version that was agreed upon by the industry partners (Ceced, Digital Europe, EERA, Lighting Europe and WEEE Forum) was version 9.0 . Hereafter WEEE Forum made a version 10.0 without consulting the other partners. This can be done any time because the WEEELABEX standard is proprietary

			to the WEEE Forum. This pleads for the use of 'public' standards like Cenelec instead of private standards.
18.	Annex Option 2.2 (i)	Is the WEEELABEX organisation accredited according to ISO/IEC 12070?	The WEEELABEX organisation is a private organisation ('owned' by the European Take Back Systems) and is not accredited.
19.	Annex Option 2.2 (i)	Does the WEEELABEX standard cover PV's and Medical Equipment?	No. The statement that WEEELABEX covers all categories is incorrect.
20.	Annex Option 2.2 (i)	What BREF documents have been used for the WEEELABEX standards?	There are no BREFS for the recycling of WEEE and no reference is made to BREF's in the WEEELABEX documents.
21.	Annex 2.2 (i)	Till what date will second- party verification will be allowed and why is it not a certification?	The industry partners (Ceced, Digital Europe, EERA, Lighting Europe and WEEE Forum) agreed that 2 nd party verification will end at 31 December 2014. The WEEELABEX organisation has now decided without further consultation that this will be extended with 1 year. It is unclear why there is no certification. A certificate with a certain period of validity would be the most practical way for providing proof to Member States that operators in third countries comply with a standard.
22.	Annex 2.2 (i)	How many operators in EU MS and EFTA have passed the conformity verification?	To date only 8 operators have passed (see website) for 5 different recycling processes.
23.	Annex 2.2 (ii)	What products in Annex II are covered by the R2 standard and how can EU MS be sure that operators in third countries treat those products only?	The R2 standard does not give a scope of products. So there is no assurance that products sent to these operators are treated under equivalent conditions.
24.	Annex 2.2 (ii)	How is it assured that R2 operators comply with the recycling and recovery rates that are mentioned under article 11 and Annex V of the WEEE Directive?	In the R2 standards there are no requirements on calculating recycling and recovery rates. Neither are there normative requirements for depollution of toxic components (removal of batteries, Cadmium, etc.).
25.	Annex 2.2 (ii)	How are R2 operators informed about possible changes in the normative requirements?	R2 is a private standard and owned by ISRI. ISRI represents the scrap metal world which advocates free trade. Standards can be changed at will and there is no guarantee that conditions will be equivalent to Europe.
26.	Annex 2.2 (iii)	What products in Annex II are covered by the E-Stewards standard 2.0 and how can EU MS be sure that operators in third countries treat those products only?	The e-Stewards standard is not publically available (privately owned by Basel Action Network – BAN). The focus of the standard is not on products but on components,

			materials and substances such as CRT's , batteries, Beryllium, PCB's, Printed Circuit Boards, etc.. Nothing is stated about Ozone Depleting substances (cooling and freezing equipment) nor on recycling or recovery rates. The enforcement of what products can be exported to e-Stewards operators is probably very cumbersome.
27	Annex 2.2 (iv)	Australian/New Zealand standard.	The AS/NZS 5377:2013 is comprehensive and is very comparable with the EN standards. Together with the EN and TS documents this standard would be acceptable to proof that the operators in third countries treat WEEE and substreams thereof in an equivalent way as is required in Europe.

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