

DIGITALEUROPE comments on the Draft Amendment of the Correspondents' Guidelines No.1 (Shipments of Waste Electrical and Electronic Equipment and of used Electrical and Electronic Equipment suspected to be WEEE)

Brussels, 21 December 2016

DIGITALEUROPE, the European association representing the digital industry, fully supports the intention of the Correspondent Guidelines aimed at preventing illegal shipments of e-Waste and closing loopholes exploited by unscrupulous actors. However, we believe that specific elements of the current Guidelines will have a considerable impact on making the Circular Economy a reality as the Guidelines could hinder our member companies' ability to operate their legitimate repair, remanufacturing and/or refurbishment service models. These models are the backbone of the circular economy as they ensure reuse by extending products lifetime and/or giving products a new life.

DIGITALEUROPE believes that mirroring the Basel approach in the Correspondents Guidelines would establish sufficient safeguards to prevent e-waste being illegally shipped and declared as products for re-use. The Basel Guidelines clarify that all products shipped for repair, refurbishment or remanufacturing should be shipped as 'non waste' without references to warranty and professional use as long as appropriate documentation (e.g. a repair contract) and packaging are provided. Both are sufficient tools to enable enforcement agencies to differentiate between waste and products sent for legitimate repair, refurbishment and remanufacturing.

In the context of the Annex 6 of Directive 2012/19/EU, DIGITALEUROPE is aligned with the European Commission's FAQ of the aforementioned Directive and relies on these definitions to assist in evaluating UEEE and WEEE. We fully support the definition of 'warranty' within the context of Annex VI point 2a of the Directive 2012/19/EU, which was provided the FAQ document, specifically FAQ 11.3 (below) and fully support that this definition has been maintained in the Correspondent Guidelines Appendix 1.

11.3. What is the meaning of a 'warranty' in the context of Annex VI point 2(a)?

In the context of Annex VI (point 2(a)), a 'warranty' can be considered to be either an obligation under national legislation of producers towards consumers for the lack of conformity of equipment on the sale of consumer goods, or any written agreement by a seller or producer to repair or replace equipment if it does not meet the specifications set out in the guarantee statement or in the relevant advertising.

Warranties include, for instance, the legal and consumer guarantees under Directive 2011/83/EC as well as warranties provided by manufacturers and sellers in relation to business-to-business transactions involving EEE. The term also covers additional contractual undertakings, e.g. extended warranties, or obligations undertaken in the context of sales, service, maintenance and repair agreements.

It is now essential that Member States continue to apply this definition of warranty including for extended warranties, sales, service, maintenance and repair agreements (Clarification on these items is provided in the box below). This is crucial so that producers can continue to operate our reuse centres, which enable the repair and reuse of large quantities of EEE and are a vital part of the circular economy.

We are pleased that paragraph 12 of the Correspondents guidelines recognises the important role of the reuse centres in achieving the circular economy. However an incorrect or inconsistent interpretation of the definition of warranty would potentially render their repair and reuse economically unviable. Rather than being shipped and repaired, these products will be scrapped and recycled and a high volume of functioning equipment (both near-new and older) will enter the waste stream prematurely and unnecessarily – contrary to the objectives of a circular economy.

In support of a common understanding of the Correspondents' Guidelines among the EU Member States, we provide the following explanations to the various elements of "warranty" mentioned in the Correspondents Guidelines' glossary ("The term also covers additional contractual undertakings, e.g. extended warranties, or obligations undertaken in the context of sales, service, maintenance and repair agreements"), by describing current practices implemented to prolong the usage time and avoidance of premature disposition of EEE:

- a. Producers offer **extended warranties in the context of sales agreements** in 2 ways.
 - i. Producers sell products with voluntarily extended warranties, at no additional cost.
 - ii. Producers also offer extended warranties separately as an option to the product for an additional charge on top of the product price.
- b. Producers offer **service and maintenance agreements** covering all repairs and maintenance for a certain period. Such contracts may be renewed on an annual basis.
- c. Producers also offer repairs in form of a **repair agreement** to fix the identified defects. In this case the repair is based on a written agreement between the producer and his service partner

Furthermore, DIGITALEUROPE considers that used EEE under a valid leasing contract and which is shipped by a person engaged, on a professional basis, in carrying out a leasing business should not be considered WEEE. This position has been confirmed in the European Commission's FAQ document, specifically referenced in FAQ 11.4 (below) and we request that this position also be maintained in the Correspondent Guidelines, as defined in recommendation 2 below.

11.4. Does the derogation from the requirements referred to in point 2 of Annex VI apply when used EEE to be shipped is under a leasing contract?

According to the definition of WEEE in Article 3(1)(e), EEE becomes WEEE when its holder discards or intends or is required to discard the EEE. Used EEE under a leasing contract and which is shipped by a person engaged, on a professional basis, in a leasing business, is not WEEE as long as there is no intention from the holder to discard it. Therefore such EEE is not 'suspected to be WEEE', unless there is another reason to believe that the used EEE is not destined for further use (e.g. insufficient packaging and inappropriate stacking of the load).

Recommendations:

- A. DIGITALEUROPE recommends that Member States continue to apply the definitions of warranty set out in Appendix 1 of the correspondents guidelines including for extended warranties, sales, service, maintenance and repair agreements (which include one-time repair agreements).
- B. DIGITALEUROPE recommends the following changes to the draft Correspondent Guidelines to better align with the EU Circular Economy policy:
 - 1. Footnote 4: add text (see also point 11.4 of the FAQ,) noting that ‘EEE returned under a valid leasing contract and which is shipped by a person engaged, on a professional basis, in a leasing business, is not WEEE as long as there is no intention from the holder to discard it’
Justification: Strengthening of definition
 - 2. Reverse footnotes 5 & 9, as there appears to be an editing error
Justification: footnote 5 should pertain to paragraphs 11, 15, 16-18, 22 and 23. While footnote 9 should pertain to paragraphs 12, 13, 14, 19-21, 22 and 23.
 - 3. Add the following footnote to point 12 (a): ‘the repair under warranty derogation may also be applied where producers or affiliates of producers are transporting EEE owned by their own facility (or a third-party facility acting on their behalf) located in an OECD country for repair or refurbishment with the intention of reuse’
Justification: clarification on intra-company shipments, where equipment is owned and shipped by a producer to one of its own facilities

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ABOUT DIGITALEUROPE

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

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

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