

EWRN Position Paper

***Concerning Proposed Exclusions from the Scope of the WEEE-
Directive Recast***

July 13th, 2010

1 European WEEE Registers Network (EWRN)

EWRN is an independent network of 10 National Registers¹ in charge of overseeing the national implementation of the WEEE-Directive in the respective EU Member States. The National Registers that make up EWRN represent more than 80% of the total European market of electrical and electronic equipment (EEE). Those responsible for managing the National Registers are working together as experts regarding (W)EEE and its proper treatment – always as representatives of their National Registers.

2 Objectives

This document aims to provide an assessment of the different exclusions from the Directive's scope as proposed by the Committee on the Environment, Public Health and Food Safety (ENVI)² (in the following: "WEEE-Directive recast") based on the National Registers' experiences with exclusions from the scope of the WEEE-Directive gathered so far.

3 Executive Summary on EWRN's Position

With respect to its environmental objectives and in order to achieve a harmonised enforcement in all Member States as well as an equal treatment of all producers affected, the future WEEE-Directive must allow an easy and sound implementation. Therefore, its scope must be understandable and clearly defined, especially not being open to various differing interpretations.

The adoption of the exclusions proposed would undermine the above mentioned aims. The proposed exclusions will increase the ambiguousness of the current Directive's scope, finally leading to non-harmonised implementation, producer discrimination, increase of free-riders as well as unnecessary and extra bureaucracy and costs.

Therefore EWRN proposes that

- The Directive's scope should apply to all EEE, regardless of where and by whom it is used, for which purposes and in which combination. Only then, harmonised implementation and enforcement with a minimum of bureaucracy in all Member States is possible.
- If any exclusions are considered necessary, they must be carefully defined to enable clear and unambiguous interpretation.
- Exclusions – if any – should only apply to self-contained equipment, the parts of which are fixed to each other in a way that all parts basically share the same destiny in terms of disposal.

The general concerns on the proposed exclusions justifying this assessment are lined out below. For further information on the proposed exclusions, please refer to Annexes 1-5.

¹ Up to now Denmark, France, Germany, Ireland, Poland, Portugal, Slovakia, Slovenia, Spain and United Kingdom are members of EWRN and have signed the Charter (<http://www.ewrn.org>).

² Compromise / Consolidated Amendments, Draft Report by Karl-Heinz Florenz, dated 16 June 2010.

4 General Concerns

According to the proposed exclusions proposed by ENVI, the following equipment shall be out of scope of the Directive:

- Large scale stationary industrial tools, “LSSIT”,
- Large scale fixed installations, “LSFI”,
- Means of Transport for persons or goods,
- Non-road mobile machinery intended exclusively for professional users,
- Photovoltaic modules.

The proposed exclusions, being poorly defined (cf. 4.1), will establish uncertainty and new unnecessary bureaucracy upon implementation (cf. 4.2). Regarding producers, negative impacts are also inevitable (cf. 4.3). Finally they will counteract the Directive’s Objectives (cf. 4.4).

4.1 Ambiguous Exclusions

- The proposed definitions of the exclusions are – at least in part – highly ambiguous. The definitions are unclear and unworkable. They allow widest possible interpretations, so will cause confusion and inconsistency in terms of implementation.

4.2 New and Unnecessary Bureaucracy

Proposed exclusions will establish new bureaucracy upon national implementation:

- The ambiguously defined exclusions proposed will cause the need for more investigation with respect to certain equipment. Thus the bureaucratic effort of the National Registers will increase. Based on the experience of the National Registers – with respect to the today’s FAQs of the Commission³ providing comparable definitions of LSSIT and LSFI – each case already causes massive investigations, requests and work for National Registers and producers concerning single EEE.
- The aim of the cooperation of the National Registers in ERWN is a concerted, harmonised implementation of the Directive in all Member States. The more exclusions, however, the Directive includes and the less specific and detailed they are, the more room for different interpretations exists for each Member State and the more coordination is needed among the National Registers. This need for coordination meets its practical limits. This effect contradicts the purpose of the Directive recast of a harmonised scope.
- Therefore, additional administrative procedures will consume time, manpower and in the end a lot of extra costs without supporting harmonisation efforts.
- The proposed exclusions will prompt already registered producers to apply for a complete or partial formal termination of their registration.

³ European Commission: “Frequently Asked Questions on Directive 2002/96/EC on the Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)”, last updated August 2006

4.3 Negative Impact on Producers

- Differing interpretations of proposed exclusions by National Registers and national courts will lead to differing standards in Member States. This will inevitably cause competition distortion and contradict any harmonisation attempt.
- Since producers will tend to interpret the exclusions in their favour, this will inevitably lead to unwanted free-riding and competition distortion.
- Proposed exclusions will require disclosure of detailed information on every single part involved, thus leading to a drastic increase of time, and effort also for producers.
- Whereas producers of LSFI and LSSIT will not fall under the provisions of the Directive, producers of single EEE are within, although their EEE may also be incorporated in a LSFI or LSSIT on a later trade level. There is no justification for that double standard of the Directive's scope.

4.4 Undermining the Directive's Environmental Objectives

- The proposed exclusions will lead to large amounts of EEE being excluded from the Directive's scope, thus massively undermining the environmental objectives as set out in its Article 1, without securing their environmentally sound disposal.

Annex 1: Large Scale Stationary Industrial Tools

1 Proposed Definitions

ENVI's Proposal

“large scale stationary industrial tools” mean an assembly of machines, equipment, and/or components, designed to be used together in industry to perform a specific task. They are installed by specialized personnel and they are permanently located during their phase of use.”
(Art. 3 sb)

2 EWRN's Position

Due to the general, unspecific wording that leaves room for multiple interpretations, it is unclear what kind of equipment should be excepted from the Directive's scope. In several Member States, earlier experiences with the exception for LSSIT within Category 6 in the current Directive and the “FAQ on WEEE and RoHS”³ already demonstrate that producers try to extend the exception as far as possible by claiming that it applies to any equipment which can be considered as a tool in the broadest meaning of the term, and which is fixed in any way to the ground or to the wall.

As the existing exception in Category 6 shows, national courts will define the limits of the proposed exception for LSSIT, without any regard to implementations and court decisions in other Member States. Inevitably this will lead to different legally binding interpretations in each Member State, thus undermining the harmonisation attempt of the Directive, which in consequence will lead to competition distortion.

In detail:

- The term **“tool”** is not restricted to means of a production process but means “any device or implement used to carry out mechanical functions, whether manually or by machine” or “a thing used in an occupation or pursuit” (Concise Oxford Dictionary). That means, a tool can also be a procedure or process or any equipment used for a specific purpose. This widely used definition applies to nearly all EEE, since each EEE “performs a specific task” (ENVI definition proposal). In that understanding, also measuring equipment and even telephone systems may be argued by producers as tools and would thus fall under the exception of LSSIT, what is obviously misleading.
- **“Assembly of machines, equipment and components functioning together for a specific application”**: Also the term “assembly” is open to the widest possible interpretation, so that the exception also applies to equipment whose single parts are not mechanically fixed together, but can be widely spread working only together by means of electric connections. Furthermore, there is no EEE known which is not composed of components functioning together for a specific application, which is just that the EEE is designed for.

- Omission of the terms **“each of which is designed for use in an industrial environment only”** and **“not intended to be placed on the market as a single functional or commercial unit”** currently found in the Commission’s FAQs³ as part of the definition of LSSIT: This will lead to all EEE fulfilling the weak exception criteria, but produced and put on the market serially with only slight and predefined variations could also be understood to be exempted from the Directive’s scope.

3 EWRN’s Proposal

If LSSIT are considered to be necessary as an exception, it must be in line with the general environmental objectives of the Directive. Furthermore, it must not affect harmonisation attempts nor promote free-riding and discrimination of producers.

In particular the exception must be defined clearly and unambiguously and must set narrow confines with regard to the specific EEE to be excepted.

In detail, with regard to the definition of LSSIT, EWRN proposes the following:

- Clarify the term “specific” application in a way that it only applies to custom-built machinery,
- Reduce the scope of the exception to equipment used in manufacturing processes, by clearly defining the term “tool” with respect to the Directive’s scope,
- Limit the scope of the exception to assemblies physically linked together as a self-contained unit,
- Define “large scale” unambiguously,
- Insert the term **“each of which is designed for use in an industrial environment only and is not intended to be placed on the market as a single functional or commercial unit”**.

Annex 2: Large Scale Fixed Installations (LSFI)

1 Definition Proposed

Definition Proposed by ENVI

“large scale fixed installations’ mean a particular combination of several types of apparatus and, where applicable, other devices, assembled and installed permanently at a predefined location.” (Art. 3 sa)

For that, a justification is provided as amendment to Recital 10:

“Large scale fixed installations, inter alia, should be excluded from the Directive’s scope because they are permanently installed and operated at a particular location, are assembled and disassembled by specialist personnel and therefore represent a controlled waste stream [...]”

2 EWRN’s Position

The exception is very similar to that for LSSIT and it is hard to see why two separate exclusions are necessary. EWRN’s position on LSFI is therefore also very similar. This is especially true with regard to the definition of the term “tool”.

In particular, if the term “tool” in the exception criteria for LSSIT (cf. Annex 1) is used in the reduced meaning of “a means for manufacturing goods”, then the LSSIT exception appears to be no more than a subset of LSFI and is therefore unnecessary.

However, the exception for LSFI appears to cover equipment which is explicitly mentioned in Annex IB of the WEEE-Directive recast. E. g. large computer mainframes, large printing machines, large monitoring and control instruments are mentioned in Annex IB No. 4 which suggests that they are subject to the Directive’s scope. Simultaneously they comply with the exception criteria for LSFI which suggests that they are exempted from the Directive’s scope. This contradiction will provoke serious confusion for producers as well as for National Registers. Whereas producers will handle the contradictory provisions of the Directive in their own interest, by pushing the exclusions to the limit, National Registers are committed to the environmental objectives of the Directive and consequently keep exclusions to the minimum.

Once more, national courts will have to interpret the exception and to set the limits causing same adverse effects as discussed in Annex 1.

The exception will apply to all LSFI, regardless where they are used, by whom and for what purpose, thus multiplying the amount of equipment excepted from the Directive’s scope.

As justification it is said, that LSFI are “permanently installed and operated at a particular location” and “are assembled and disassembled by specialist personnel”. No substantiation of these arguments has ever been provided, but they are used to pretend that there is a controlled waste stream, something the WEEE-Directive itself should assure.

Detailed comments:

- There is no correlation between the fact of permanent installation and the handling of WEEE when the installation is dismantled.
- The justification for the exception implies that the installation is erected as well as disassembled and disposed of all at once (which is often not the case) and is performed by specialised personnel only. In many cases each piece of EEE and also each other device in such an installation can be purchased individually by anyone and be dismantled and replaced without excessive effort and without considerable impact on the substance of the installation concerned. In many cases, installation as well as disassembling of a LSFI can even be performed by the user himself.
- There is not any reference provided which provisions for the recycling, recovery of materials, and environmentally sound disposal may apply in reality. In common, it is left to recyclers/dismantlers how they handle the waste stream. Recovery targets, requirements on treatment facilities, monitoring provisions laid down in the Directive will not apply, as well as provisions on the use of hazardous substances.

As a result, an exception of LSFI will increase the distortion of competition due to free-riders. Based upon EWRN expertise producers tend to misinterpret the exclusions in their favour.

To justify EWRN's concerns, to which extent producers tried to push exclusions in the past, an example-list of applications for claimed "LSFI" is attached.

3 EWRN's Proposal

Against the above background, it is EWRN's proposal to reject the proposed exception of LSFI or at least clearly define what an LSFI should be.

Examples of LSFI applied for – not being LSFI at all

Equipment	Details	Justification
Emergency lighting systems	Emergency lights controlled (switched on or off) by a central control unit, connected by cabling, installed by electricians (professionals)	Multiple single units, each with a direct function (luminary). Each unit easily removable, e.g. for exchange of units, by disconnecting wires without affecting the system as a whole.
Access control systems	Composed at least of card readers, door openers, control unit (e. g. standard PC with software), connected by cabling or wireless, installed and adjusted by professionals	Multiple single units, each with a direct function. Each unit easily removable, e.g. for exchange of units, by disconnecting wires without affecting the system as a whole.
Surveillance systems (CCTV)	Composed of cameras, monitor(s), recorder(s), connected by cabling or wireless, installed and adjusted by professionals	Multiple single units, each with a direct function. Each unit easily replaceable without affecting the system as a whole, e.g. upon exchange.
Large-sized information displays	Schedules in stations, airports, score displays in stadiums, ..., fixed to the building, remote controlled. Delivered in parts and assembled at its final place by professionals	Court decision: Direct function of the equipment. Functional and commercial unit. Since a building is not “equipment” in the normal sense of the word, a display cannot be part of the building as another type of equipment. The display is not necessary for the functioning of the building nor is it fixed to it in a way that a significant impact on the building occurs when removing the display.
Illuminated advertising equipment	Fixed to a building or the ground. Construction permit needed. Individual construction, no repetition parts	A building is not “equipment”, so the term “part of another type of equipment” doesn’t apply. Each equipment has a direct function and is a functional unit.
Building installation in general	Air conditioning equipment, radiators, central heating, water pumps	A house or building is not “equipment”, so the term “part of another type of equipment” doesn’t apply. Each equipment has a direct function and is a functional and

		commercial unit. It is not fixed to the building in a way that heavy impact on the building occurs when being removed. E.g., in case of exchange of cooling equipment only that and not the whole building has to and can be exchanged.
Soundmixing desks (recording studios)	Different equipment installed in racks and consoles, like equalisers, sound processors, mixers, controls	Not a self-contained “equipment” in total. Individual units not designed to remain in the system during its entire lifetime. E.g., 19 inch rack-system units can be easily exchanged and dismantled from the rack/frame.
Radio station	Composed of signal processing units, amplifiers, transmitting aerial, cooling system	Court decision: Not a self-contained “equipment” in total. Individual units not designed to remain in the system during its entire lifetime. E.g., 19 inch rack-system units can be easily exchanged and dismantled from the rack/frame.
Anti-theft systems (e. g. in supermarkets)	Composed of RFID tags, activating, deactivating equipment, alarm units. Parts not fixed together, only working together by means of electromagnetic fields	Multiple single units, not even connected to each other, but each with a direct function. Each unit easily removable by disconnecting wires without affecting the system as such.
Computer connected within a LAN/WLAN and server	Professional used PC (dual use >> b2c) in a company connected to centralised server where the data is stored or retrieved from	PC itself has a direct function as well as the parts of the server-rack. Each element of the EEE is easily to connect or disconnect.

Annex 3: Means of Transport for Persons or Goods

1 Definition Proposed by ENVI

“Means of transport for persons or goods” (Art. 2 para 3 cd)

For that, an explanation is provided as Art. 3 sd:

“means of transport’ means a vehicle used for transport of people or cargo, such as cars, buses, trucks, trams, trains, ships and airplanes”

2 EWRN’s Position

The exception may be acceptable if limited to (private) cars, means of public transport or mass transport of goods, as the examples suggests. Such means are not regarded as EEE in the public opinion, and are partly already covered by specific Directives (End of Life Vehicles Directive).

The definition itself (“Means of transport for persons or goods”) can be understood in a much wider sense and includes EEE like scooters, golf-caddies, electric-bikes, and other leisure equipment or fork-lifts, hand-pallet-trucks and other non-road means of single goods transportation, which are not covered by any other Directive.

Again, the definition is ambiguous and open to divergent interpretations and thus may lead to non-harmonised implementation, competition distortion and free riding. Further the arguments given under Annex 2 No. 2 under “Detailed comments” (bullet point No. 3) apply correspondently.

3 EWRN’s Proposal

Rephrase the exception to “cars, means of public transport or mass transport of goods” and hold the description in Art. 3 sd up.

Annex 4: Non-Road Mobile Machinery operated exclusively by Professional Users

1 Definition Proposed by ENVI

“non-road mobile machinery intended exclusively for professional users” means machinery the operation of which requires either mobility while working or continuous or semi-continuous movement between a succession of fixed working locations, or machinery which is operated without being moved, but which may be equipped in such a way as to enable it to be moved more easily from one place to another and is made available for the use by professionals.” (Art. 3 sc)

For that, a justification is provided as amendment to Recital 10:

“[...] Mobile machinery operated exclusively by professional users should likewise be excluded because it too is disassembled and disposed of by specialist personnel and it therefore represents a controlled waste stream.”

2 EWRN’s Position

- Concise Oxford Dictionary defines “machine” (machinery is defined as “machines collectively”) as, among other things, “a piece of electrical or electronic apparatus”. This emphatically makes the point that “mobile machinery” could be interpreted to mean any piece of electrical or electronic equipment that is capable of being moved. Therefore the proposed exception of non-road mobile machinery will lead to the exclusion of most professionally used equipment and therewith of a remarkable part of total EEE.
- There is no substantiation provided why non-road mobile machinery operated exclusively by professional users should in case of disassembling and disposal represent a controlled waste stream. Again, there is not any reference provided which provisions for the recycling, recovery of materials, and environmentally sound disposal may apply in reality. In common it is left to recyclers/dismantlers how they handle the waste stream. Recovery targets, requirements on treatment facilities, monitoring provisions laid down in the Directive will not apply, as well as provisions on the use of hazardous substances.
- On the contrary, one can expect that recycling will only be performed as far as it is economically advantageous, the vast reminder being dumped including hazardous substances contained because of lack of restrictions.

3 EWRN’s Proposal

With respect to this background, it is EWRN’s proposal to reject the intended exception for non-road mobile machinery for professional users as far as no general exception for professional EEE is intended. Otherwise, the exception itself must be defined clear and unambiguous.

Annex 5: Photovoltaic Modules

1 Definition Proposed by ENVI

“photovoltaic modules’ means photovoltaic modules which are intended for use in a system designed, assembled and installed for permanent operation at a specified location for power generation for public, commercial and private purposes” (Art. 3 ce)

For that, a justification is provided as amendment to Recital 10:

“Photovoltaic modules, which are also installed and removed by specialist personnel and are instrumental in achieving renewable-energy targets, thus helping to reduce CO₂, should also be excluded. Furthermore, the solar industry has concluded a voluntary environmental agreement with the aim of recycling 85% of photovoltaic modules. The Commission should check whether that agreement is achieving at least equivalent results as compared to this directive and whether it is covering all photovoltaic modules placed on the market and, if appropriate, on the basis of a report, include photovoltaic modules in the scope of the Directive.”

2 EWRN’s Position

- With respect to the environmental objectives of the Directive, there is no reason to except just one part of a power generation system, thus dividing the system in a part falling under the Directive’s scope (the control unit and transformer) and the other part (photovoltaic modules) excepted.
- Experience shows that photovoltaic modules are delivered to ordinary waste collection facilities by private end-users. This absolutely disproves the thesis that photovoltaic modules are all installed, removed and taken-back by specialised personnel only.
- One environmental target – CO₂ reduction – must not be played off against another environmental target - prevention of waste. There is no hierarchy of environmental targets and no justification for one target to be short of the other.
- Voluntary agreements on a private basis (“self binding declarations for take-back by industry”) – although subject to review by the Commission – are not binding as a general rule and thus cannot be appropriate to assure sound and safe handling of waste streams in a proper way in any case. Also such self binding declarations of producers/industry/associations cannot be enforced if needed.

3 EWRN’s Proposal

There should not be an exception of photovoltaic modules in the Directive.