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# AmCham EU position on Shipment of used EEE and Annex VI of the proposed WEEE recast Directive

The insertion of Annex VI (formerly Annex IC) into the draft Directive establishes criteria to distinguish between legal shipments of used EEE from shipments of WEEE. The requirements in Annex VI need to strike a balance between allowing a legitimate business activity that helps increase the re-use of EEE and not creating a loophole that allows WEEE to be moved across borders for illegal disposal.

AmCham EU's members are concerned that the requirements placed upon producers in the draft Annex VI will shut down lawful business operations that seek to refurbish and reuse EEE that is not yet at end of life. Many companies move products or sub-systems for refurbishment or to be sent to specialised repair hubs in Europe (or in another OECD country) as either a service, as leasing operators, as part of after-sales services, for reprocessing or analysis, including recertification, or simply for re-use by a third party as part of the existing second hand market.

These operations help to ensure that a piece of equipment's life can be usefully and safely extended. It also ensures that less of this product ends up as waste, thereby achieving more re-use of products, a key aim of European regulators.

AmCham EU strongly urges the European Parliament and the Council of Ministers not to place extra bureaucratic obstacles in the way of an efficient model of re-use and refurbishment of EEE products. Doing so would have an undue impact on jobs and re-use levels of EEE within Europe, with no environmental benefit.

The development of Annex VI on shipments of used EEE puts in place a high burden of proof to demonstrate that used EEE are not WEEE. Should regulators further increase the requirements on producers, they may put an end to the refurbishment market for many devices including medical devices, fire and safety equipment, as well as monitoring and control instruments.

American Chamber of Commerce to the European Union  
Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium  
Telephone 32-2-513 68 92 Fax 32-2-513 79 28  
Email: [info@amchameu.eu](mailto:info@amchameu.eu)

Secretariat Point of Contact: Leah Charpentier [leah.charpentier@amchameu.eu](mailto:leah.charpentier@amchameu.eu) +32 2 289 1015

POSITION STATEMENT

AmCham EU supports requirements on producers and service suppliers to establish that used EEE is in fact not WEEE (e.g. proper documentation and packaging to protect the equipment from damage during transport). However, these requirements should not be raised to the point where implementation costs and administrative burden become such that companies can no longer undertake leasing contracts, carry out specialised or intricate repairs that the EEE or its sub-systems, may require, or parts to be returned to the manufacturer or an authorised repairer in another Member State or OECD country.

In concrete terms, the draft rules in Annex VI refer to several types of equipment including certain types of medical devices, fire and safety equipment, or monitoring and control instruments, their sub-systems or parts. These types of equipment often need to be serviced by experts who can evaluate whether any repair or refurbishments are necessary. These products may be outside of any warranty (Annex VI, 1a.) and could be subject to after sales agreements that are contracted out to third parties.

There are many commercial reasons that companies may want to move EEE or sub-systems cross border for repair or refurbishment, these include:

- Return to the manufacturer or to a test house for investigation after an ‘adverse event’ in which a patient or user was harmed (regulatory compliance or for quality assurance monitoring of devices as required by the Medical Device Directives);
- Return to the manufacturer for repair. It has been recognised under RoHS that some equipment can have a very long service life, to well in excess of ten years and therefore far exceed the warranty period. Highly specialised or intricate repairs may require that the device be returned to the manufacturer or a regional authorised repairer in another Member State;
- Return to manufacturer for refurbishment and repair to return the equipment or its major components to the marketplace. For numerous long-lived medical devices and monitoring and control equipment, the product can be refurbished or updated (e.g. software or hardware);
- Return to a lessor upon expiration of a lease agreement. Many companies finance their equipment through leasing affiliates. Lessors want to repair and re-use equipment as they can maximise the initial investment in the equipment and need to re-lease it to recover their original investment; and
- Parts harvesting: to extend the lifetime of existing aged installations which could otherwise not be used anymore because of obsolete parts, and which are given an extended use through parts harvesting.

The actual refurbishment or repair of used EEE is done under highly controlled conditions to ensure performance and safety when reused. Refurbishment is

done by the original manufacturer or an authorised dealer in specialised refurbishment centres.

Annex VI could also significantly impede the ability to refurbish and re-use leased equipment. Lessors are uniquely motivated to repair and re-use equipment since they typically assume a residual investment in leased equipment and need to re-sell or re-lease equipment in order to recoup their full investment in the asset. Consequently, lessors' repair programmes secure very high re-use rates.

The consequence of a strict Annex VI that places a requirement of a functionality test on manufacturers before moving products for repair or refurbishment would make these legitimate shipments of non-functional devices illegal. Requiring a functionality test would be an impossible requirement to meet. We cannot declare that a product is functioning until it has been reviewed by an expert. This test would effectively shut down the repair and refurbishment market.

The European Commission's own report on Environmental, Social and Economic Impact Assessment of new Waste Shipment Inspections, Controls and On-the-Spot Checks (ENV G4/FRA/2007/0067 June 2010) found that inspections are able to distinguish between used EEE and WEEE, without the proposed onerous conditions<sup>1</sup>.

AmCham EU believes that the solution to minimising illegal shipments is inspection and enforcement; not imposing more requirements on those that are already in compliance.

To achieve the objectives of the measures in Annex VI, the requirements need to strike a balance between allowing a legitimate business activity that helps increase reuse of EEE and not creating a loophole that allows WEEE to be moved cross border for illegal disposal. AmCham EU recommends that regulators put in place a series of requirements that allow authorities to quickly assess whether a product is used EEE or WEEE.

We recommend that these be:

- Correct packaging;
- A statement of intent that the product is not WEEE; and
- A contract or other paperwork to demonstrate that the product, or its sub-system, is either under warranty or subject to a business contract or agreement for the legitimate purpose of repair, refurbishment, or parts harvesting, or regulatory compliance (e.g. quality assurance monitoring of devices required by the Medical Device Directives).

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<sup>1</sup> IMPEL-TFS' Seaport project revealed 564 illegal waste shipments and 473 other infractions related to the Waste Shipment Regulation, out of a total number of 1103 shipments. These impressive numbers underline **the potential of inspections in detecting infractions.**



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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totalled €1.4 trillion in 2009 and currently supports more than 4.5 million jobs in Europe.*

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