

WEEE Obligation for Producers – Open Scope White Paper

A. Legal Background

Starting from 2005 the concept of EPR (Extended Producer Responsibility) was implemented and is since then applied to all producers of Electrical and Electronic Equipment (EEE). A **producer** according to the definition of the WEEE Directive Recast **can be** either a **manufacturer of EEE** producing (or sourcing under own brand) and selling in a specific Member State (Art. 3, f (i), (ii)), **an importer** of EEE from another Member State (or a third country) (Art. 3, f (iii)) **or a distance seller** putting EEE on the market of another Member State by means of Distance Selling (Art. 3, f (iv)).

Producer in the meaning of the WEEE Directive can be **Manufacturers, Importers or Distance Sellers.**

Electrical and Electronic Equipment (EEE) is defined as follows (Art. 3, 1 a):

“electrical and electronic equipment’ or ‘EEE’ means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1 000 volts for alternating current [AC] and 1 500 volts for direct current[DC].”

Such EEE according to Art. 2, 1 (a) is **currently** limited to products that can be allocated to the categories listed in Annex I & II of the Directive and should not be to any of the three exclusions according to Art. 3 (a), (b) or (c). The Directive text provides for a **transition period up to 15.08.2018** in which that old (closed) scope is still applicable. Afterwards an Open Scope will be applicable and all EEE needs to be classified in 6 new categories instead of the existing 10 categories.

B. Open Scope

Article 2.1 b) of the WEEE Directive (2012/19/EU) states:

“1. This Directive shall apply to electrical and electronic equipment (EEE) as follows:

...

b) from 15 August 2018, subject to paragraphs 3 and 4, to all EEE. All EEE shall be classified within the categories set out in Annex III. Annex IV contains a non-exhaustive list of EEE which falls within the categories set out in Annex III (Open Scope).”

*As from 15.08.2018 legislation shifts towards an Open Scope and **all products using electrical currents or electromagnetic fields need to be considered in scope**, unless producer can prove it to be subject to an existing exemption.*

This shift of scope has consequences on producers and will require two different ways of action:

1) Producers who are already obliged today

- A **critical check of the complete product portfolio** is needed to identify additional products **that have not been reported as Electrical and Electronic Equipment (EEE)** and need to be reported in future

2) Producers of Electrical and Electronics Equipment who are not registered yet and have never reported EEE in any Member State so far

- An **assessment of the complete product portfolio** is required to understand
 - If the company puts EEE on the market in a Member State that is not **subject to one of the exemptions** the WEEE Directive foresees (see below definitions of Art. 2.4)
 - If the company (or one of its entities in other EU countries) therefore **has to be considered as producer** in line with the legal definition
 - If consequently **a registration in one or more Member States is required** to fulfil the relevant national producer obligations

All Producers of products using electrical energy need to verify if their relevant product portfolio increases or whether they are newly affected by the WEEE Directive and need to take action to be compliant with legislation.

C. Exemptions stated in the WEEE Directive (Art. 2.3 & Art 2.4)

Exemptions according to the Old (Closed) Scope (according to Article 2.3 WEEE Directive)

- **equipment which is necessary for the protection of the essential interests of the security** of Member States, including **arms, munitions and war material intended for specifically military purposes**
- equipment which is **specifically designed and installed as part of another type of equipment** that is excluded from or does not fall within the scope of this Directive, which can fulfil its function only if it is part of that equipment
- **filament bulbs**

Exemptions according to the Open Scope as from 15.08.2018 (according to Article 2.4 WEEE Directive)

- equipment designed to be sent into space
- **large-scale stationary industrial tools**¹
- **large-scale fixed installations**², except any equipment which is not specifically designed and installed as part of those installations
- **means of transport for persons or goods**³, excluding electric two-wheel vehicles which are not type-approved
- **non-road mobile machinery**⁴ made available exclusively for professional use
- **equipment specifically designed solely for the purposes of research and development** that is only made available on a business-to-business basis
- medical devices and in vitro diagnostic medical devices⁵, **where such devices are expected to be infective prior to end of life, and active implantable medical devices**

¹ https://www.ewrn.org/fileadmin/ewrn/content/documents/161028_EWRN_LSSIT_WEEE2_Guidance_fin.pdf

² https://www.ewrn.org/fileadmin/ewrn/content/documents/161028_EWRN_LSMI_WEEE2_Guidance_fin.pdf

³ https://www.ewrn.org/fileadmin/ewrn/content/documents/161028_EWRN_MT_WEEE2_Guidance_fin.pdf

⁴ https://www.ewrn.org/fileadmin/ewrn/content/documents/161028_EWRN_NRMM_WEEE2_Guidance_fin.pdf

⁵

https://www.ewrn.org/fileadmin/ewrn/content/documents/161028_EWRN_expected_infective_MD_WEEE2_Guidance_fin.pdf

D. How to interpret products / exemptions?

Identification of whether a product is / will be in scope or not is a process that requires in-depth analysis and legal background knowledge. Basic information, explanation and examples have been published as FAQ document⁶ by the EU Commission, however day to day experience shows that there is still a lot of room for (mis-) interpretations that can lead to wrong results⁷ and consequently cause legal incompliance with severe consequences (penalties).

It is therefore time **now** to undertake a critical review. WEEE Europe and their Partner Schemes in the various EU Member States share plenty of knowledge on the topic both on national as well as European level and are therefore the perfect partner explore the specific national challenges, answer questions and to provide solutions for compliance.

Existing guidance documents still require intensive focus on the specific situation of a producer. Exemptions need to be interpreted in a very narrow range and the basic principle is: Everything is in scope until the contrary is proven!!

E. Producer's Obligations

Producers falling under the scope of the Directive basically need to:

- Take responsibility for the whole product lifecycle
- Register to national WEEE/Battery Registers
- Appoint an Authorised Representative in case not being physically present in a Member State
- Finance collection and recycling of Waste of Electrical and Electronic Equipment (WEEE) unless other agreements have been made with clients according to Article 13.
- Declare the Put on the Market (PoM) in every country where they are producer
- Take-back WEEE (0:1 / 1:1) – individually or collectively
- Fulfil various information obligations

Basic obligations apply to all countries, however are implemented with national specific particularities.

⁶ <http://ec.europa.eu/environment/waste/weee/pdf/faq.pdf>

⁷ European WEEE Registers Network, guidance document Large Scale Fixed Installations: "1) Objective The European Commission previously published two FAQ documents¹ to interpret the prerequisites of large-scale fixed installations (LSFI). Unfortunately, those interpretations did not remove the possible misunderstandings in this area. Therefore, this document provides guidance and clarification for the interpretation of the exclusion LSFI for the Directive 2012/19/EU (WEEE2)."

F. Multinational Producers

Implementation of national legislation differs significantly from country to country.

- Products need to be allocated to the correct product categories
- Put on the Market declarations are required from monthly, quarterly, bi-annually to annually, depending on the country
 - Type of reporting the Put on Market varies from pieces, pieces and weight to weight only
 - The same sometimes applies even to local categories in one country

Guidance on how to handle the challenges for multinational setups can be provided based on the competence of the leading Take Back Schemes in Europe with WEEE Europe as Central Office to provide efficient services in a One-Stop-Shop approach.

WEEE Europe

WEEE & Battery

Time-saving:
Professional administration of your product-portfolio regarding WEEE & Battery-Compliance

PoM Declarations

Effective & cost-efficient:
Central PoM declaration via one Online-Platform

European Specialists

Sustainable:
Producer-owned non for profit take-back systems
Access to long-year experience of national specialists

B2B & B2C One-stop solutions

Advantage:
Central contact person, B2B & B2C
Excellent price / performance ratio

Austria	Belgium	Denmark	Germany
Finland	France	Great Britain	Ireland
Italy	Netherlands	Norway	Poland
Romania	Sweden	Switzerland	Switzerland
Slovakia	Spain	Czech Republic	

- ✓ **The best Take Back Schemes in Europe in a One Stop Shop approach**
- ✓ **Non for profit**
- ✓ **50% of the European E-waste treated through WEEE Europe Partners (ca. 1,5 Mio tons per year)**
- ✓ **Professional Support by the Central Office together with the National Specialists**

PoM Reporting

Product Allocation

Contract Handling

Assessment Consulting



G. WEEE Europe

WEEE Europe is a pan-European non-profit-organisation based in Munich, Germany. Our current 19 Partners have successfully established around 70,000 collection points and are collecting 1.5 million tonnes of waste annually – that is around 50 % of the total e-waste collection in the entire EU including Norway and Switzerland.

We support producers with services (Assessment, Contract handling, Product Allocation and Reporting) all across the EU plus Norway and Switzerland.

Based on the national expertise of our Partners and the international competence through the WEEE Europe Central Office we are the perfect partner for consultancy and compliance handling across Europe.

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