National Registration for Producers of Electronic Waste
National Registration for Producers of Electronic Waste
Preface

In a market economy, business success and continuity is ultimately determined by the market. So the transformation that is clearly visible in our companies is accompanied by political and legal changes in the nations.

The Directive on Waste Electrical and Electronic Equipment serves as an example that affects companies in many ways. The most striking feature of the guideline is that the necessary registrations must be obtained for each nation of the European Union. This book is meant to support you in this matter. It has called on experts from each nation to describe the situation in their countries on the basis of a defined questionnaire. Their articles want to enable the reader to understand the matter of affairs in each country and to provide a point of contact.

Complying with the obligation to register, however, should not be sufficient for forward-looking businesses. Future-oriented companies should endeavor to operate in a more environmentally sound and sustainable way, with a view to the whole life cycle of the product. From a scientific perspective, this effort must be supported by the development of procedures that allow for a systematic analysis and improvement of the system including the necessary services.

Within this context, an ongoing collaboration between reliable partners and disciplines is required. For this reason, the present book is based on the close collaboration between

– IWEEE Services GmbH, Boeblingen
– Diem und Partner, Law Firm, Stuttgart
– Fraunhofer Institute for Manufacturing Engineering and Automation, Stuttgart

as well as with the authors from the different countries of the European Union.

I would like to express my sincere thanks to the authors for their efforts and to Springer-Verlag for including the book in their range of products, as well as to the printing house for its neat and prompt production. I hope this book may be helpful to all companies who need to register in the different countries of the European Union.

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Introduction

Introduction to the WEEE Directive (2002/96/EC)

By 1WEEE Services GmbH

A The WEEE Directive (2002/96/EC)


For achieving this objective, “producers” of electrical and electronic equipment (“EEE” in the following) are responsible for treatment, recovery and financing aspects relating to the recycling of WEEE (Articles 6, 7 and 8 of the WEEE Directive).

End-users are no longer allowed to dispose of their WEEE as household waste but shall return their WEEE to public collection points free of charge.

B The Implementation into National Law

The WEEE Directive refers to Article 249 Clause 3 of the EC Treaty. According to Article 17 of the Directive, EU member states had to comply with the Directive by 13 August 2004. Several countries failed to meet this deadline. However, by now all 27 European member states have implemented a national WEEE legislation.

The national WEEE legislations may differ from the WEEE Directive, as long as the minimum standards of the Directive are met and its principles and main ideas are transposed into national law. However, the European member states are currently trying to achieve a uniform interpretation of indistinct definitions and exemptions. To this end, they meet on a regular basis to discuss open questions.
C Three Good Reasons Why This Book Could Help You

1. First of all, this book gives an excellent overview of the implementation of the WEEE Directive in the different EU member states and identifies national specifications.
2. Furthermore, this book provides detailed information concerning registration, reporting and take back in each country. So it can help you to become and stay compliant with the WEEE Directive.
3. As most of the country reports originate from a national law office or authority, this book provides national information at first hand.

D Does Your Product Fall Under the Scope of the WEEE Directive

The WEEE Directive applies to all EEE which

– falls under the ten categories set out in Annex IA of the WEEE Directive;
– depends on electric current or electromagnetic fields in order to work properly and is designed for use with a voltage rating not exceeding 1000 V for alternating current and 1500 V for direct current;
– is not part of another type of equipment which does not fall under the WEEE Directive;
– is not intended for military purposes specifically.

E The “Producer”: The Obliged Party for WEEE Purposes

Obliged under the WEEE Directive is the so-called “producer”. For identifying if you are considered to be a “producer” obliged to register, take back, reuse and dispose of WEEE, you have to disengage from habitual language use. Article 3 (i) of the WEEE Directive distinguishes three different aspects: ‘producer’ means any person who, irrespective of the selling technique used, including by means of distance communication in accordance with the Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts:

(i) manufactures and sells electrical and electronic equipment under his own brand,
(ii) resells under his own brand equipment produced by other suppliers, a reseller not being regarded as the ‘producer’ if the brand of the producer appears on the equipment, as provided for in sub point (i), or
(iii) imports or exports electrical and electronic equipment on a professional basis into a Member State.
Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a “producer” unless he also acts as a producer within the meaning of sub points (i) to (iii).

Following this definition, WEEE obligations lie with the party who
– is the manufacturer of EEE and the first who sells the product on the national market under an own brand; or
– is the reseller of EEE and puts it on the national market under an own brand and the brand name of the manufacturer does not appear on the product (If the brand name of the manufacturer appears on the product as well, the manufacturer and not the reseller would be considered as the “producer”).; or
– is the importer of EEE and the first who puts the product on the national market.

You can find the national producer definitions in the respective country profiles. “Producers” have to comply with the following requirements.

F Registration at the National Authorities

Regarding producer registration, so far no attempts of harmonization have been successful. There are not even two countries following the same registration approach.

For details about a particular EU member state please refer to the respective country profile.

a. Registration Body

The organizational structure of a national registration body is not defined by the WEEE Directive. In some countries it was established as a public authority under the control of a ministry, e.g. the Ministry of Environment. In others, it was founded by industry as independent organization. There are also countries where a registration body is not directly available for producers; registration can only be submitted through a compliance scheme with which a producer needs to affiliate (e.g. in the UK).

b. Frequency

In most countries a one-time registration is sufficient, followed by reports; several others require annual re-registrations (e.g. Ireland), which means it is a pre-requisite for being allowed to put EEE on the market in the subsequent year.

c. Registering Entity

The registering entity needs to be a “producer” according to the national definition (see Section 5). In a number of countries, foreign producers are allowed to register
from abroad (e.g. UK and Germany); in others they need at least to name a local representative (e.g. Spain). Other countries do not accept registrations of foreign entities at all, or only when joining a local compliance scheme to ensure financing of take back and recycling.

d. Way of Submission

Most countries have enabled online registration where required data shall be entered into a customized Internet portal. In addition, producers need to send in additional hardcopy documents in some cases, e.g. a signed print-out of the registration file or copies of contracts with compliance schemes.

e. Required Registration Data

The amount and complexity of required data for registration ranges from basic company data such as address, contact details of representative and the yearly WEEE volume in one figure to highly complex queries including, e.g., monthly WEEE volumes per category and type of equipment (ToE), details on financing and financial guarantees and the description of waste management systems.

Most common requirements are a distinction between B2C (household) and B2B (professional) products put on the market,¹ the WEEE sales forecast in weight (instead of or in addition to the number of units), and a specification of the intended operational take-back approach.

Producers need to be aware that the definition of B2C vs. B2B and the correct calculation of the WEEE weight (parts of the finished product can be excluded, e.g. packaging, manuals) may also differ from country to country.

The most common proof of an accredited registration is a national WEEE registration number issued by the registration body, and possibly the listing of the company on the authority’s web page.

However, particular countries do not issue separate WEEE registration numbers at all as, e.g., Denmark and Sweden.

Country-specific rules also apply to the use and publication of a WEEE registration number, e.g. the rule to show it on invoices and business stationery.

f. Fees

In a number of countries no registration fee is charged by the national authority. Where fees are applicable, the amount may depend on the size of the company or on the (estimated) WEEE volume to be put on the market in the next period.

¹You can find the definition of “put on the market” in the respective country profile.
This variety of registration aspects, as described earlier, requires substantial time and effort for affected producers to comply with WEEE obligations in multiple EU member states.

However, external advice and facilitation through specialized service providers are helpful to identify the relevant national registration requirements, timelines and formats, as well as to tackle the language barriers and to submit the registration files in the appropriate form and with the correct content to the right organization.

G Reporting

The variety of reporting procedures is similar to the complex situation of registration, as outlined above. This situation forces a producer to create reports country by country. Due to the lack of harmonization today it is not possible to submit pan-European WEEE reports to authorities.

In general, two kinds of reporting can be distinguished: the so-called input reporting versus output reporting.

1. Input reporting

The input reporting contains the amount of electrical and electronic devices put on a national market by a particular producer. These figures are the basis to calculate the producers’ “market shares” of WEEE and to determine their proportional responsibility for historic waste (EEE put on the market before 13 August 2005).

a. Frequency

Reporting periods for volumes put on the market (input reporting) differ from country to country. In a number of countries, the submission of figures for B2C products is required more often (e.g. monthly) and in more detail than for B2B products (e.g. annually). Sometimes the frequency of required reports even differs between the compliance schemes in a country. (Producers should be aware that the definition of B2C (household) versus B2B (professional) products is not consistent with the WEEE Directive in some EU member states!)

b. Determination of weight

Usually the volume put on the market needs to be reported in weight (kilograms or tons), sometimes additionally in units. Countries may have different rules for calculating the weight, i.e. which parts of the product are considered accessories and may be deducted from the overall weight.

c. Reporting classes

Another difference from country to country is the structure of reporting categories. In general this is similar to the product groups as used in the local registration process. A number of countries uses the 10 WEEE categories, others have created their own reporting classes. For example, Austria has lessened the number of reporting classes to five by merging several WEEE categories. On the other hand, Germany has increased the number of reporting classes literally to infinity, as the country requires the reporting by type of equipment (subcategories to the 10 product categories) and by brand.
2. Output reporting
The requirement for regular output reports complements the reporting obligations of WEEE producers. Output reports document the volumes of WEEE taken back by producers or – on their behalf – by the compliance scheme and subsequently the appropriate management and treatment of these waste products.

The WEEE Directive regulates inter alia the recycling rates per WEEE category that producers and their contracted treatment facilities respectively need to accomplish (e.g. minimum of 75% of material recovery). The recycling processes and results must be documented and the producer is obliged to report it to the responsible national body. Alternatively, these tasks are taken over by a compliance scheme of which the producer is a member.

Usually an output report is required to be submitted on an annual basis for the preceding calendar year.

H Labelling

In accordance with Articles 10 Clause 3 and 11 Clause 2, each producer has to label his EEE with a crossed-out wheeled bin as shown in Annex IV of the WEEE Directive.

I Take Back and Recycling

As already mentioned above, producers have to take back and recycle all WEEE according to the volume they put on the market. These obligations are mostly fulfilled by local service providers and compliance schemes. Please find specific country details in the respective country profiles.

Further consultation concerning WEEE, batteries and packaging waste is offered by 1WEEE Services GmbH (www.1weee-services.com).
The Implementation of the WEEE Directive in the EU: An Overview of Recent Case Law in Germany

By Carsten Ulbricht

A Introduction

The German “Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten (ElektroG)” which is based on the Directive on the Restriction of the Use of Certain Hazardous Substances No. 2002/95/EG (RoHS) and on the Directive on Waste Electrical and Electronic Equipment No. 2002/96/EG (WEEE) has brought big changes to the entire electronic devices market.

The ElektroG imposed major new responsibilities on companies wishing to sell their products in the German market. The main objectives are to avoid electronic waste, to increase the re-use, recycling and recovery of waste and to decrease the content of hazardous substances. Whether or not a company has to obey the rules of the ElektroG depends on whether the business can be subsumed under the law’s definition of the word “producer”. § 3 XI ElektroG defines the “producer” very similar to the WEEE directive. However, § 3 XI No. 3 ElektroG imposes duties on all importers that are classified as “producers” in terms of the law.

When the German law entered into force on 24 March 2005 and 13 August 2005, many questions arose covering the general compatibility of the ElektroG with Constitutional Law, the scope of application, registration issues, etc. Several of these issues have been cases pending in German courts for the past months and years.

Within this chapter, we would like to give an overview of the most relevant topics that where discussed and decided by German courts. These decisions will most likely be highly relevant to cases in other countries. As Germany was one of the first EU countries to implement the regulations into national law, the reasoning of the decisions might also apply to cases in the rest of the EU.

B Case Law

1. Compatibility with the German Basic Law

On 18 October 2006, the administrative court Ansbach\(^2\) was the first court to make a decision on the compatibility of the ElektroG with the German Basic Law. The judges stated that the statute’s basic purpose is legitimate and infringes neither the fundamental rights of producers nor the principle that measures should not be retroactive.

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\(^2\)VG Ansbach: Urteil vom 18.10.2006 – 11 K 06.1946.
2. Scope of Application: Definition of Electrical Appliances

To fall within the scope of application of the law, the product in question has to be an electrical appliance. The first lawsuit on this subject was brought before court when the Foundation Elektro-Altgeräte Register (EAR), which is the registration authority, considered a certain sneaker to be an electrical appliance that contains a small micro-computer in the heel area, making over 4,000 calculations each second to enhance and modify the cushioning of the heel. All German administrative courts including the court of last resort – by name the Federal Administrative Court of Germany – advanced a dissenting opinion.³

The German Federal Administrative Court points out that the main question is whether or not the product in question can be subsumed under one of the ten categories listed in § 2 I 1 ElektroG, which are exhaustive. With regard to the sneaker the only potentially applicable category was number 7 for “toys and pieces of sports equipment”. The court defines a “piece of sports equipment” as an item that is required in order to exercise a certain sport and which is possibly standardized and destined for the achievement of certain performances.

With regard to this definition the court explains that the sneaker is not a piece of sports equipment but a piece of clothing because this sneaker can be used in numerous ways and even if it cannot be used for exercising any more, it does not lose its function as a piece of clothing. Therefore the court decided that although the sneaker used some sort of electronic device, it does not fall into the scope of application of the ElektroG. The same applies to all products that have to be considered as clothing according to the definition of the Court.

3. Items That Are Part of Units to Which the ElektroG Does Not Apply

In another case, the EAR claimed that temperature regulators inserted into large-scale industrial plants are included in the scope of the ElektroG. The administrative court Ansbach decided that the exception stipulated in § 2 I 1 Hs. 2 ElektroG does not cover components of the system if they are permanently incorporated into the large-scaled industrial plant and share its destiny. The possibility of removing these temperature regulators at any time does not change this judgment.

4. Registration

According to §§ 3 XI and 16 II 1 ElektroG, a producer has to be registered with the EAR. Details of the registration include the company’s name, the location of the branch office or head office, the authorized representative, the type of equipment, and most notably the brand names which are used by the producer to put his products on the market.⁴ The brand name is the connecting factor to identify the producer’s product responsibility.⁵ Therefore, for launching the product on the market every product has to be registered indicating all brand names used.

⁴VG Ansbach, 06.03.2008 (Az.: AN 11 S 07.03346).
⁵VG Ansbach, 12.03.2008 (Az.: AN 11 K 07.03347).
5. Law of Unfair Competition
The Appellate Court of Düsseldorf decided that § 6 II ElektroG is not only an environmental guideline but a legal regulation in accordance with § 4 No. 11 UWG, which is destined to be a regulator for market behaviour on behalf of all market participants. Because the distribution of electrical and electronic equipment requires registration, the latter contains a regulator for market behaviour. One of the reasons given is the provision of § 14 V ElektroG saying that the amount of waste electrical and electronic equipment every registered producer has to collect is calculated according to a producer’s proportion of electrical and electronic equipment. Therefore, a large market share will increase the take-back responsibilities of the producer. The bottom line is that producers can be sued by their competitors under the law of unfair competition if they fail to fulfil the registration requirements.

6. Public waste management authorities
According to § 9 ElektroG, the municipalities and the administrative districts are the public waste management authorities. They have to accept and collect waste electrical and electronic equipment from households free of charge, and hold it ready for collection by the producers. The system works as follows: If the municipalities have collected a sufficient amount of waste in special bins provided by the producers, they inform the EAR. The EAR then decides which of the registered companies is due to pick up the waste. This decision is made upon a roster basis. Usually, pick-up and further processing is done by a recycling subcontractor.

The definition of households in § 3 IV ElektroG is as follows: “private households as defined in the Closed Substance Cycle and Waste Management Act (KrWAbfG) and other sources of origin of WEEE, provided that the WEEE from these other sources is comparable in nature and quantity to that from private households.”

This definition leads to the question how to distinguish private households from other sources.

The public waste management authorities are only obliged according to § 9 ElektroG to accept so-called “B2C products”. This term summarizes waste from private households and waste from other sources. The terms B2B and B2C are short forms for business-to-business (B2B) and business-to-consumer (B2C). The main difference between B2B and B2C is who the buyer of a product or service is. The so-called B2B products cannot be disposed of through the public waste management authorities.

In 2007, the German Federal Armed Forces claimed to have the right to dispose of its waste electrical and electronic equipment free of charge. The administrative court Hannover decided that the amount of WEEE dumped by the Federal Armed Forces is not comparable with the amount of waste disposed by a private

6 OLG Düsseldorf, 19.04.2007 (Az.: I-20 W 18/07).
7 VG Hannover, Urteil vom 10.10.2007, Az. 1 A 7031/06.
household. The court stated that each case has to be assessed by the circumstances. And that in this case the amount of WEEE which consisted of 57 pieces of electronic equipment cannot be compared to the amount produced by a private household and therefore this waste does not come from any other source of origin according to § 3 IV ElektroG.

C Summary

The review of the German case law shows that quite a lot of questions remain open and are far from being resolved. However, the German courts have shed some light especially on the scope of application. This should help many producers of electrical and electronic devices to check whether the German ElektroG applies to their products or not.

It will however take another while before a certain standard of legal clarity might be reached. In addition, the affected producers have to keep an eye on the amendments being made not only to the German ElektroG and the Kostenverordnung (meaning the Expenses Directive to the ElektroG), but also at European level. The revision of the WEEE directive is around the corner and will presumably bring some changes and, above all, clarification of the scope of the WEEE legislation and a Europe-wide standardized definition of the legal term “producer”.
Review of the WEEE Directive

By Stefan Dully

The demands placed on businesses to meet their producer responsibility obligations are great. The WEEE is currently subject to a review process, for which first studies were carried out by independent consultants. These studies prove that there are great differences in the implementation of the WEEE and that producers or retailers face considerable difficulties when selling goods throughout Europe. In most countries, the introduction of the WEEE is not seen as an invitation to apply a more environmentally friendly design but as another type of waste charges. This was certainly not the object of the exercise and therefore the legislators will try to remedy the problem. All the same, one should not forsake the hope that some systems in certain countries will dismiss their complicated structures and become again more user-friendly. Especially small businesses are hampered by these complicated structures.

One should keep the objectives of the legislation in mind to avoid losing track of the multitude of systems. The requirements for more environmental friendly design will further increase in the coming years. New directives are being or have been passed that do not only cover the waste but the whole life cycle of a product. A future-oriented firm is thus well advised to look at the aims of the directives and derive the actions that it needs to take – even if actions are not yet explicitly required. The EU has shown its willingness to enforce the individual measures, not least by imposing recycling and recovery rates.

In the following, it is described how companies can prepare for the future requirements in the EU.

Avoiding waste means that companies save as many resources as possible on products and packaging. Virtual functions are one way to achieve this. Recycled materials should be employed as often as possible. In addition, it is worth thinking about the use of renewable resources or biodegradable plastics. Hazardous substances should not be used in the first place, because if they are banned it would require considerable expenditure for redesign. The fact that a product is easy to repair will not only extend its service life, but also reduce the potential amount of waste produced.

Preparing products for reuse means to enable them to be adapted to the needs of the future. Products must be adaptive and modular. A first step might be that software products can be updated. New business or sales strategies such as the renting or leasing of products could also create new ideas that promote the reuse of products.

The recycling of products is influenced to a large extent by factors such as the number of substances and materials used. Of key importance are the joining techniques, since recycling is facilitated if products are easy to disassemble. An easy disassembly places similar requirements on products as an easy assembly on the shop floor.
**Other ways of recovery**, such as energy recovery and the disposal of the products, should, if possible, not be considered in design and engineering. In other words, products which do without these two hierarchical stages are most likely to meet future environmental requirements.

**D Conclusion**

In politics, ongoing efforts are made to place the responsibility for the whole life cycle of a product on the producer. Many companies regard this as an additional burden and have not yet realized that it provides new opportunities for them and their products. Especially businesses which have invested heavily in this area are positively affected by a strict legislation, giving them a competitive advantage over their competitors.

For a systematic approach, it is recommended to record the future legislative innovations in a roadmap and to derive the actions a company needs to take, as well as to start implementing the Design for Environment. Here, the Fraunhofer-IPA with its wealth of experience can help by creating roadmaps for companies as well as offering implementation strategies and training courses.

The Fraunhofer-IPA has been consulting companies for many years in the design of ecological and economic solutions. In addition, the Fraunhofer-IPA enables companies through regular workshops to get informed on the latest developments. You will find more information at the address given below.

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