WEEE Directive and the Recast

May 2013

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www.element14.com/legislation  glegislation@premierfarnell.com
The European Commission has published the recast Waste Electrical and Electronic Equipment (WEEE) Directive and this must be transposed into law by EU States and come into effect by 14 February 2014. Here is a summary of the new directive 2012/19/EU that affects equipment manufacturers, importers and distributors.

What is the objective of the WEEE Directive and what are its key provisions?

The aim of the Waste Electrical and Electronic Equipment (WEEE) Directive is to prevent the generation of electrical and electronic waste and to promote re-use, recycling and other forms of recovery in order to reduce the quantity of waste discarded. It requires the separate collection of waste electrical and electronic equipment and the recovery and recycling or reuse of collected WEEE.

The original directive sets out collection requirements with a minimum collection target of 4 kg per inhabitant per year for WEEE from private households. In line with the so-called waste hierarchy, preference is given to re-using whole appliances of collected WEEE. In addition the directive provides minimum combined targets for recycling, recovery and reuse that are specific to each type of WEEE. The directive requires all separately collected electrical and electronic equipment to be treated according to the requirements laid down in Annex II.

The WEEE directive is based on producer responsibility and the polluter pays principle as enshrined in the EU Treaty. The producers of equipment used by private households are responsible for providing financing for the treatment, recovery and environmentally-sound disposal of WEEE that is collected from designated collection facilities such as municipal waste sites. Producers of equipment used by others than private households (such as businesses) are financially responsible for the costs of collection from final users, as well as treatment, recovery and environmentally-sound disposal.

Member States are required to draw up a register of producers and collect information on an annual basis on the quantities and categories of electrical and electronic equipment placed on their market, collected, re-used, recycled and recovered within that Member State and on collected waste that is exported.

The main obligations of the WEEE directive placed on equipment manufacturers and importers include:

- Registration and reporting past sales. In some EU States, all producers must register directly whereas in others registration is carried out by compliance schemes on behalf of their members.
- Finance treatment, recovery and recycling of collected WEEE. This is usually carried out by joining an approved producer compliance scheme that administers WEEE collection and recycling and reports data to national governments. Some States have many schemes available such as the UK and Germany, whereas other States, such as Belgium and Sweden, may have only one national compliance scheme available for each type of product.
- For equipment used by private households, producers need to pay a financial guarantee although in many States this is funded as part of the producer compliance scheme fee.
- Business WEEE must be collected from users at end-of-life unless they agree alternative arrangements, i.e. the user organises safe disposal according to the WEEE directives obligations.

Why did the Commission amend the directive?

The WEEE Directive came into force on 13th February 2003. In the first few years of the directive a number of technical, legal and administrative difficulties became apparent which resulted in unintended costs and burden on market actors and administrations. Producer’s obligations, definitions, registration requirements varied considerably as each EU Member State implemented the directive differently. The WEEE Directive was thus included in the Commission’s rolling programme for simplifying the directives.

Experience also indicated that the directive’s expectations in protecting health and the environment was not being achieved as there are relatively low collection and recycling rates.

Which problems needed attention?

Only approximately a third of waste electrical and electronic equipment (33%) is reported to be treated according to the legislation. The rest goes to landfills.

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(13%) or potentially to sub-standard treatment inside or outside the EU (54%). Illegal trade to non-EU countries is still widespread. However, some business WEEE is safely collected and recycled, but this is not recorded by WEEE systems.

Material resources, which can potentially replace extracted raw materials are lost when WEEE is sent to landfill or the best options for recovery of those materials are not used, for example if WEEE is not collected and recycled within well regulated EU schemes. Improper treatment of collected WEEE potentially results in environmental damage and increased health risks, in the European Union and especially in non-EU countries.

The scope of the original directive was sometimes unclear and this caused competition distorting effects and rendered implementation unnecessarily complex, causing greater administrative burden. This burden has been specifically related to the lack of harmonised registration and reporting requirements for producers.

**Changes required by the Recast Directive**

a. Harmonise the registration and reporting obligations for producers. This will require additional Commission legislation. The original plan for EU wide registration was dropped as all Member States believed that this would not be feasible. A significant change will affect distance sellers based in one EU State who sell products to users in another EU State. Distance sellers will be obliged to appoint authorised representatives in States where they have no presence and they sell to users by telephone, post or the internet. These authorised representatives will have to meet the obligations for the distance sold products. It is inevitable that national implementation will continue vary between EU States, but the recast is an opportunity to make improvements and so changes will be made. One example suggests that “small producers” be excluded from financing requirements and would only need to register.

b. From 14 August 2018, the WEEE directive will have an open scope similar to RoHS, with exclusions that are similar but not identical to the RoHS directive’s exclusions. More definitions have been included in the directive.

c. Change the collection target from the current 4kg/capita per year (“one size fits all”) to an increasing collection rate based on EEE placed on the market (POTM). From 2016, this will be 45% of the average weight of EEE POTM in the previous three years and from 2019 this will increase to 65%. 10 Member States have a slightly lower rate target from 2016 and can delay the 65% target until a date before 2021. These national collection rate targets will inevitably be passed down to industry by Member State legislation, but how this will be achieved has not yet been decided in most States.

d. Combined recycling and reuse targets which are socially and environmentally viable that will sort out current deterrents to re-using EEE. These rates will initially be 5% higher than previously but will include reuse. New recovery and recycling / re-use targets for medical devices have been included.

e. Minimum inspection requirements for Member States to strengthen the enforcement of the of the directive and include minimum monitoring requirements for shipments of WEEE. This is intended to deter illegal exports of WEEE to developing countries where unsafe recycling processes are carried out.

What overall improvements can be expected?
• Reduction in the administrative burden to producers without lowering the level of environmental protection. Harmonisation of registration and reporting format obligations should help, but it appears that extra obligations will arise when shipping non-functioning EEE that is not waste.

• Enhance effectiveness of the directive through simplified and improved implementation. The open scope will remove some grey areas but increase the scope to include other types of EEE. New grey areas may also be created if the excluded categories are not totally clear. Member States can also take this opportunity to redraft their national WEEE legislation and implementation procedures to correct mistakes, simplify obligations and reduce costs.

• Reduce the environmental impacts of collection, treatment and recovery of WEEE at levels providing the greatest benefit to society. This should hopefully be achieved by the much higher mandatory collection rate targets which will eventually be equivalent to at least 85% of WEEE that arises.

Description of main changes

Clarification of the scope and definitions

• The ten categories of the WEEE directive will be replaced from 14 August 2018 by six new categories that are intended to include all types of EEE. These are:
  ○ Temperature exchange equipment such as refrigerators and freezers
  ○ Screens, monitors etc with surface greater than 100cm²
  ○ Lamps
  ○ Large equipment such as washing machines, although “large” is not defined
  ○ Small equipment such as vacuum cleaners (small is not defined)
  ○ Small IT and telecom with no external dimension >50cm, would include mobile phones

From 15 August 2018, several new exclusions will take effect, these are:
  ○ Equipment designed to be sent into space
  ○ Large-scale stationary industrial tools
  ○ Large-scale fixed installations
  ○ Means of transport
  ○ Non-road mobile machinery
  ○ R&D equipment
  ○ Medical devices and IVD that are expected to be infected before end-of-life and implanted medical devices are excluded

These new exclusions will join military / national security equipment and filament light bulbs, which were excluded from the original directive. The Commission and Member States plan to publish FAQ guidance on the new WEEE directive’s requirements. This should include definitions of terms such as large-scale fixed installations although these are likely to be similar to the descriptions in the RoHS FAQ guidance.

What happens next?

Member States have until 14 February 2014 to enact new legislation and, by this time, some new procedures
for national implementation will need to be in place. One of the few changes that will take effect on this date in all EU States will be that distance sellers will need to have appointed Authorised Representatives. Another change will be when used EEE is shipped outside of an EU State. It will be necessary to prove that it is functional or, if not, to provide documentation that proves that it is being shipped for the purpose of repair “with the intention of re-use” or for root cause analysis (professional EEE only).

The Commission is tasked with implementing legislation to establish uniform registration and reporting information in all EU States. No deadline has been set for this.

Changes to national implementation may occur although most will not directly affect manufacturers or importers of EEE. Hopefully any changes will simplify obligations and reduce costs but this remains to be seen.

Please note:

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WEEE Recast written in collaboration with ERA Technology Ltd (www.era.co.uk)
May 2013