



Client Alert

June 2012

WEEE Directive

Summary

The recast waste electrical and electronic equipment (WEEE) Directive was formally adopted by the Council of the European Union on 7 June 2012. As with previous WEEE legislation, the purpose of the Directive is to improve the collection, re-use and recycling of used electrical and electronic equipment (EEE) in order to help reduce waste and promote resource efficiency.

The revision process has been lengthy, with the European Commission setting out its original proposals back in December 2008. This reflects the protracted nature of negotiations between institutions and stakeholders as to the precise scope of the Directive and the extent of producers' obligations under the new WEEE regime.

Timetable for implementation

The Directive will become law later this summer, 20 days after it has been published in the Official Journal of the EU. Member States will then have 18 months to update their national legislation in order to comply with the changes. Thereafter, the new provisions will replace the existing WEEE text (Directive 2002/96/EC).

Key changes

The recast Directive heralds a number of significant changes, the most notable of which include:

1. **Wider scope:** A broader range of producers will now fall within the scope of the revised WEEE regime. In principle, the new Directive covers all EEE. As a result, collection and recycling obligations will, for the first time, apply to producers of photovoltaic panels, equipment containing ozone-depleting substances and fluorescent lamps containing mercury. Obligations in respect of these products now brought within the scope of WEEE will apply within six years of the Directive's entry into force (i.e., from mid-2018).

Note, however, that certain types of EEE continue to be expressly excluded from the scope of the Directive. These include equipment designed to be sent into space, large-scale stationary industrial tools and large-scale fixed installations (such as oil platforms, airport luggage transport systems, or elevators).

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Looking ahead, the Commission is empowered to propose changes to the scope of the legislation on the basis of its impact on businesses and on the environment.

2. Higher collection targets: At present, Member States are required to collect 4kg of used EEE per person. However, under the revised Directive, Member States will be required to considerably increase the volume of used EEE collected and recycled:
 - From 2016, Member States must annually collect an average of 45% of the weight of EEE placed on their national markets.
 - From 2019, Member States must either collect 65% of EEE placed on their national market or 85% of WEEE generated in their national market.

Some EU Member States (Bulgaria, the Czech Republic, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovakia and Slovenia) where consumers use fewer electronic devices will be given a degree of flexibility in achieving the targets.

3. Introduction of a take-back obligation for distributors of small EEE: For the first time, distributors must provide for the collection, at retail shops with EEE-designated sales areas of 400 m² or more, of very small WEEE (e.g., electric toothbrushes). Such take-back services must be provided to end users free of charge and must not be accompanied by an obligation to buy EEE of an equivalent type. This obligation will only apply to EEE having no external dimension more than 25 cm in length.
4. Tougher restrictions on the illegal export of WEEE: To prevent producers from side-stepping EU rules and processing EEE in countries where conditions are hazardous to workers and the environment, stricter shipping rules will apply. In particular, under the new Directive, exporters will be responsible for proving that goods are being shipped abroad for legitimate purposes (i.e., repair or reuse).

Compliance challenges

The broader scope of the legislation and the more burdensome nature of the obligations are likely to represent a challenge for some industry sectors in terms of compliance with the new Directive.

One of the main difficulties is likely to be the high minimum collection rates, particularly as significant proportions of WEEE may not be captured by official collection systems. For example, in Poland it is estimated that, at present, less than 30% of WEEE is collected through official channels. One obstacle to broader membership of official collection schemes is the significant additional costs for producers that such membership may entail (for example, to cover that official collection operator's administrative fees and compliance checks). It remains to be seen how Member States will address this issue when transposing the new Directive into their own national law by 2014.

More generally, experience with the original WEEE Directive and other EU environmental measures has demonstrated how individual Member State approaches to transposition and enforcement can lead to substantial variations at the national level. This will remain a consideration, given that many of the new Directive's requirements are drafted broadly and afford considerable discretion to the Member States. Thus, it will be important for companies to carefully monitor the transposition and enforcement of the WEEE Directive in the months ahead.

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