

Preparing for the WEEE Directive



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Recycling requirements for equipment sold in the EU go into effect Aug.13. A primer on getting ready.

The Waste from Electrical and Electronic Equipment (WEEE) Directive is scheduled to be implemented by EU Member States later this year and will require producers of electrical and electronic equipment to set up and fund systems to collect their end-of-life products. The Directive also establishes criteria for treating and recovering waste and sets recovery and recycling targets.

Like the RoHS Directive, the WEEE Directive will affect virtually all EEE sold in the EU. This article summarizes key aspects of WEEE and identifies steps companies should take now to ensure compliance and minimize risk.

WEEE applies to a broad range of EEE – essentially any product that requires electricity to function properly. Products are organized into 10 categories, and include everything from household appliances to computer equipment and medical devices.

While many types of EEE will clearly fall into one category, others will either potentially fall into more than one category, or not neatly within any. In addition, although there are various categorical and use exemptions and exclusions, there are ambiguities and uncertainties regarding a number of these (e.g., the large-scale industrial tool exclusion) which merit careful attention. Four types of EEE are excluded from coverage under WEEE: 1) equipment intended for military purposes; 2) large-scale stationary industrial tools; 3) implanted and injected medical devices; and 4) EEE that is part of another type of equipment not subject to the WEEE Directive (e.g., car radios).

The Directive sets recycling and waste reduction targets for each of the 10 categories (Table 1). Taking IT equipment as an example, for every unit that enters a treatment center in the EU, 65% by weight must be re-used or recycled. Companies are required to provide for the treatment of WEEE “using the best available treatment, recovery and recycling techniques.” Components, materials and substances that are not recovered (reused, recycled or incinerated for energy) must be disposed of in an “environmentally sound way,” consistent with EU Directives on waste management.



Category	Target
Categories 1 and 10	
• Recovery	min. 80%
- Reuse and recycling	min. 75%
- Incineration for energy	max. 5%
• Disposal	max. 20%
Categories 3 and 4	
• Recovery	min. 75%
- Reuse and recycling	min. 65%
- Incineration for energy	max. 10%
• Disposal	max. 25%
Categories 2, 5, 6, 7 and 9	
• Recovery	min. 75%
- Reuse and recycling	min. 65%
- Incineration for energy	max. 10%
• Disposal	max. 25%
Gas Discharge Lamps	
• Recovery	min. 80%

TABLE 1: Recovery, reuse and recycling targets defined by the WEEE Directive (all percentages are by weight per appliance).

The WEEE Directive imposes obligations and responsibilities on “producers” without regard to the producer’s location and nationality, the place of manufacturing of EEE, or the means by which EEE is sold (through a retailer, mail order or the Internet). Companies are considered “producers” if they 1) manufacture and sell EEE under their own brand name; 2) resell (under their own brand) EEE manufactured by another company; or 3) export or import EEE into the EU. Producers are obliged to:

- Register with each Member State.
- Meet information requirements.
- Meet design requirements.
- Provide financial guarantees.
- Finance the collection, treatment, recovery and disposal of WEEE.

Registration requirements vary from state to state, but it is expected that producers will have to submit information about prior sales of EEE to determine, in the case of waste generated from "private households," the producer's market share.

For products put on the market after Aug. 13, 2005, producers are required to add the crossed-out waste bin label (set forth in the Directive) and to mark products indicating that they have been "put on the market" after Aug. 13, 2005. It is unclear whether these two requirements are duplicative or whether the crossed-out waste bin label is required only for waste from private households. In any event, the EU Commission mandated CENELEC, the EU standard-setting organization, to develop a standard in connection with these issues, which is now adopted.

The WEEE Directive specifies that producers must not "prevent, through specific design features or manufacturing processes, WEEE from being re-used." Producers must also provide re-use and treatment information that identifies the different EEE components and materials, and the location of all dangerous substances and preparations so that re-use, treatment and recycling facilities can manage and treat WEEE appropriately and effectively. Producers can provide material content information in manuals or through electronic media such as CD-ROM and online services, and must make this information available within one year of the date on which each new type of EEE is placed on the market.

It is worth noting that the WEEE Directive itself does not apply directly to producers. Rather, each Member is required to pass implementing legislation that will be directly applicable to producers. The WEEE Directive requires EU Member States to have nationwide collection systems in place for WEEE by Aug. 13.

Financial Guarantees

When a producer places EEE on the market, it must provide a financial guarantee that it will finance the management of WEEE from domestic households in accordance with the WEEE Directive. Recent clarifications issued by the Commission provide that financial guarantees may take the form of producer participation in appropriate schemes for the financing of the management of WEEE, recycling insurance or blocked bank accounts. This list is not exhaustive and Members may allow other forms of financial guarantees.

And what exactly are producers guaranteeing to finance? By Aug. 13, producers must finance the collection, treatment, recovery and environmentally sound disposal of all WEEE in the EU. The scope of the financing obligations differs depending on whether WEEE is "new" or "historical," and whether the WEEE is from private households or not. New WEEE is any waste resulting from EEE "put on the market later than August 13, 2005." Historical WEEE is any waste resulting from EEE "put on the market before August 13, 2005."

Private household WEEE. Producers must finance the management of historical WEEE from private households "proportionally." Although the Directive does not define "proportionally," it is understood to mean that each producer will have a financing obligation calculated on the basis of the producer's market share at the time the WEEE management costs arise. In practice, this means that, in addition to being required to finance waste management costs associated with their own historical WEEE from private households, current market players will pay for the cost of managing the waste of products sold in Europe by companies that either do not exist anymore or have a smaller market share today than they had before Aug. 13.

Regarding new WEEE from private households, producers are responsible for financing the collection, treatment, recovery and disposal "of their own products." This provision reflects amendments adopted in the last negotiation stages of the Directive (and following intense industry representation at the EU Commission) and appears to codify the concept of "individual financing" previously considered by the EU Commission. These amendments appear to be designed to assure existing producers that they will not have to pay for the management of WEEE from other producers. It should also permit producers to establish their own WEEE management systems, although it is clear that certain Member States will oblige, by law or as a matter of practice, producers to join public or private collective WEEE management systems.

Non-private household WEEE. As expected, the EU Parliament and EU Council amended the financing requirements applicable to producers in connection with WEEE from non-private households. A producer will be responsible for financing the costs of historical WEEE if the producer supplies new equivalent products that replace the historical WEEE or new products that fulfill the same functions as the historical WEEE. In other words, it is now irrelevant whether the producer sold the equipment being replaced. If the producer sells new equipment that replaces equipment sold before Aug. 13, then the producer will be responsible for recycling the old equipment. A non-private household that disposes of historical WEEE without replacing it with any other product will be responsible for financing the costs of managing the historical WEEE. For new WEEE, the amendments confirm that producers of equipment put on the market after Aug. 13 will be responsible for financing the costs of recycling for that equipment at end of life.

For both historical WEEE and new WEEE, however, the amendments confirm that producers and non-private households may negotiate agreements that provide for other financing arrangements. The amendments also provide that Member States may allocate a portion of or all the costs of managing historical WEEE onto non-private households.

Missed Deadlines

Although most Member States will miss the WEEE Directive implementation deadline of Aug. 13, several have already completed their implementation process. Others, such as the U.K., have published detailed regulatory proposals that are still undergoing public review. And still others, such as Germany, have acknowledged that their recycling program will not be in place by Aug. 13 and are instead focusing on a later implementation date.

A survey of the status and content of each Member State law is beyond the scope of this article. Companies should focus their efforts on the EU Member States in which they, or their customers, do the most business.

The provisions of the WEEE Directive can vary in each Member State through the adoption of national legislation. At this early stage, it is still difficult for producers to know exactly what will be required. Following is an overview of some of the key issues to be resolved.

Covered companies. It is still unclear whether there can be more than one producer for each EEE put on the market, especially when a company imports the product on behalf of an OEM that has operations in the EU and whose brand name appears on the product. In addition, it is unclear how each Member State will track EEE and impose financial guarantee obligations when EEE is imported into one Member State and then transported to another Member State for sale. These issues are likely to be addressed, at least in part, by the individual Member's registration requirements.

Scope of the Directive. The 10 categories of EEE and the examples of specific EEE within these categories (Annexes IA and IB of the Directive) are ambiguous at best. While the appropriate category for many products is clear, there is ambiguity for others, particularly those that do not fall neatly within any one category or which appear to be close to being covered by a particular exemption (e.g., the LSIT). The Technical Adaptation Committee (TAC) issued a draft document that provides general guidelines, addresses specific items such as batteries and ink cartridges, and discusses the relationship of the WEEE Directive with the End-of-Life Vehicle Directive (relating to automobiles). This guidance document is still in draft form and remains subject to change. In addition, even upon finalization, it will remain to be seen whether Member States will follow these guidelines.

Scope of information reporting obligations. The Directive requires that producers report information to treatment centers and identify the location of “dangerous substances and preparations.” But what materials must be reported? Is it only the substances banned by the RoHS Directive, or are others included? Some companies have begun to collect information on thousands of materials in their products, while others are focusing only on the six RoHS-banned substances. Over-compliance by a few OEMs could potentially drive up market practice and, eventually, legal requirements, which would result in additional cost to industry.

Meeting WEEE requirements. As noted, each Member State may implement the WEEE Directive differently. Some will mandate individual compliance, some will permit collective compliance schemes, and some may permit both. While it would seem logical for an EU-wide solution to emerge, this is not expected to occur. Factors influencing a company’s compliance strategy include how to deal with private household WEEE as opposed to non-private household WEEE, and differences among product types, their values and key markets.

Although the WEEE and RoHS Directives do not prescribe any specific penalties, they require Members to adopt penalties applicable to violations of domestic laws implementing the Directives.

Despite the continuing uncertainties in the development and implementation of these laws, WEEE and RoHS are here to stay, and important dates in their implementation are coming up. Manufacturers should be aware of the WEEE and RoHS calendar and should be planning accordingly. Important WEEE and RoHS implementation dates are listed in Table 2.

Date	Implementation Requirement
Feb. 13, 2003	Directives became effective
Aug. 13, 2004	Member States began adoption of implementing domestic laws
Aug. 13, 2005	WEEE collection systems must be in place. Producers must start financing WEEE collection system. All products must be properly labeled.
From July 1, 2006	Producers cannot put EEE on the EU market that contains lead, mercury, hexavalent chromium, cadmium, polybrominated biphenyls (PBBs) or polybrominated diphenyl ethers (PBDE).
By Dec. 31, 2006	EU countries must ensure that at least 4 kg of WEEE is collected per household, per year.
From Aug. 13, 2011	Producers may no longer place a visible fee on the sale of new EEE to show the costs of the collection, treatment, recycling, reuse and environmentally sound disposal of historical WEEE.

TABLE 2: Key RoHS and WEEE deadlines.

Your company should consider the following actions:

- Establish an internal compliance team (composed of engineers, sales and marketing personnel, and legal counsel) to evaluate your WEEE compliance requirements and options. This team should be working closely with your RoHS compliance team, and have the ear of senior management.

- Determine which Member States are most important to your business and get to know the rules and decision-makers in those jurisdictions. Begin obtaining product and content certification from your suppliers to be prepared to meet information requirements likely to be imposed by individual Member States. Ensure that you will be able to provide information about the quantities (and possibly weight) of products sold in each Member State.

- Scrutinize your contracts with customers and suppliers to determine how WEEE-related liabilities are allocated, if at all.

- If you are a producer, ensure that you are registered with each EU Member State in which you sell products.

- Identify compliance schemes that are developing in the Member States in which you do business.

- Identify potential alliances, competitors, service providers, etc. who may play a role in your compliance strategy.

- Identify potential cost and budgeting issues that may be associated with WEEE costs, and consider implications for financial reporting requirements.

- Keep an eye on other environmental developments that are anticipated in Europe, such as rules governing eco-design. Also carefully monitor similar developments in other parts of the world, including Asia and the U.S.

- Take a more proactive approach to product design. By designing for reuse and recycling, producers minimize waste from a specific product and, the less waste in a product, the less cost to the producer. For example, before reaching treatment facilities, WEEE from collection facilities and non-private households may be “re-used as a whole.” When a product is reused as a whole, it essentially exits the waste stream and the cost of managing that waste is delayed.

Authors’ note: This article is for informational purposes only and does not contain legal advice.

Bibliography

1. Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), http://europa.eu.int/comm/environment/waste/weee_index.htm.
2. CENELEC (European Committee for Electrotechnical Standardization) Standard EN 50419:2005, Marking of electrical and electronic equipment in accordance with Article 11(2) of Directive 2002/96/EC (WEEE).

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