

EWRN

European WEEE Registers Network

EWRN Comments

***Concerning Article 16 subparagraph 3 of the WEEE-Directive
Recast***

July 13th, 2010

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EWRN is an independent network of 10 National Registers¹ in charge of overseeing the national implementation of the WEEE-Directive in the respective EU Member States. The National Registers that make up EWRN represent more than 80% of the total European market of electrical and electronic equipment (EEE). Those responsible for managing the National Registers are working together as experts regarding (W)EEE and its proper treatment – always as representatives of their National Registers.

Article 16

Article 16 – covers the creation, organization and mission of the registers, the Producers relations with these bodies and the gathering of MS information and reporting to the Commission.

In the recast text version of the Presidency, dated 16 April 2010, five points and one additional article – Article 16A – address these objectives.

Proposed text of the Presidency:

1. Member States shall draw up a register of producers, including producers supplying electrical and electronic equipment by means of distance communication in accordance with paragraph 2.

That register shall serve for monitoring compliance, [...] including the financing obligations under Articles 12 and 13.²

2. Member States shall ensure that any producer on their territory can **also** enter in their national register all relevant information online, including reporting requirements and fees, reflecting its activities [...].

[...]³

3. The format for registration [...], including information on quantities of electrical and electronic equipment placed on the national market, [...] type of equipment, categories, where appropriate **financial** guarantee, and the format and frequency **of** reporting to the register, shall be established. Those measures designed to amend

¹ Up to now Denmark, France, Germany, Ireland, Poland, Portugal, Slovakia, Slovenia, Spain and United Kingdom are members of EWRN and have signed the Charter (<https://www.ewrn.org>).

² FI/LV/EE/FR/AT suggest to delete this sentence. Cion opposes to this suggestion.

³ FI add (2a): "Before making EEE available on the market, the distributor shall verify that the producer of the EEE concerned is registered in accordance with paragraphs 1 and 2."

non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).

4. [...] ⁴
5. Member States shall collect information, including substantiated estimates, on an annual basis on the quantities and categories of electrical and electronic equipment placed on their markets, collected through all routes, re-used, recycled and recovered within the Member State, and on separately collected WEEE exported, by weight [...].

[...]

6. [...] Member States shall send a report to the Commission on the implementation of this Directive and on the information set out in paragraph 5 at three-year intervals. The implementation report shall be drawn up on the basis of a questionnaire laid down in Commission Decision 2004/249/EC ⁵ and Commission Decision 2005/369/EC ⁶. The report shall be made available to the Commission within nine months of the end of the three-year period covered by it.

The first three-year report shall cover the period from 20xx* to 20xx .

The Commission shall publish a report on the implementation of this Directive within nine months after receiving the reports from the Member States.

Article 16a⁷

Administrative cooperation and exchange of information

- [...] Member States shall ensure that appropriate measures are taken in order to encourage the authorities responsible for implementing this Directive to cooperate with each other, **notably to ensure compliance of distant sellers with the provisions of the Directive** and, **where appropriate**, provide each other and the Commission with information in order to [...] **facilitate the proper implementation** of this Directive. The administrative cooperation and exchange of information shall take utmost advantage of electronic means of communication. ⁸

General comments to the proposed Presidency text:

⁴ SE: add a provision to ensure that producers will not be double charged for the cost of registration.

⁵ OJ L 78, 16.3.2004, p. 56.

⁶ OJ L 119, 11.5.2005, p. 13.

* year of entry into force.

⁷ NL does not find this Article useful, suggests its deletion.

⁸ Proposed new recital: Member States should ensure an adequate flow of information in order to make possible an implementation of this Directive in full respect of internal market requirements, namely with regard to avoiding any repetition of requirements to producers.

Points 1 and 2 cover the establishment and tasks of National Registers. No major comments on those.

Point 3 covers the format for registration. However the proposed text shows several misunderstanding regarding registration and reporting, by mixing the two concepts.

Registration is an administrative act, which only requires general information about the producer and his products, proof of producer responsibility (such as provision of a financial guarantee where appropriate) and at the end of which a producer registration number is issued.

Reporting is a periodic requirement for registered producers, in which quantities and types of electric and electronic equipment placed on the market in that period are declared to the National Register.

It is EWRN's recommendation that the Directive should make a clear distinction between the two acts of registration and reporting.

Secondly EWRN recommends that a more detailed description on the requirements for each of those acts – registering and reporting – should be given in the Directive to avoid the need to issue future Commission Decisions, as happened recently with the Batteries Directive.

Points 5 and 6 define MS obligations regarding gathering of certain market information, such as, but not limited to, collection and treatment and the reporting of this information to the Commission. No comments on those.

Article 16A covers cooperation and exchange of information between National Registers. This is an effective way to cope with the free-rider problem.

Proposed EWRN text for Article 16 subparagraph 3:

The proposed new Article 16 subparagraph 3 is structured in 5 points as followed:

1. Producers shall register before they place electrical and electronic equipment on the market of a Member State for the first time and shall be provided with a registration number upon registration. The producer shall keep the registration information updated.
2. For the purpose of registration, producers of electrical and electronic equipment shall provide at least the information set out in Annex V of this Directive.
3. National Registers may only apply registration fees on the condition that these are cost-based and proportionate. National Registers applying registration fees shall inform the competent national authorities of the methodology for calculating such fees.
4. Member States shall ensure that National Registers are entitled to deregister producers of electrical and electronic equipment if they:
 - a. No longer meet the definition set out in the Article 3(j) of this Directive;
 - b. Do not fulfill reporting obligations set out in this Directive; or
 - c. Do not fulfill financing obligations set out in this Directive; or
 - d. Do not fulfill tack-back obligations set out in this Directive.
5. Producers shall report to the National Registers periodically, the amount of electrical and electronic equipment placed on these markets. Producer reports must include at least the information set out in Annex VI of this Directive.

Justification for this text:

For the proposed text we followed, as close as possible, the text structure adopted for Batteries Directive and reporting of the Commission decision of 5 August 2009 - which establishes requirements for registration of producers of batteries and accumulators in accordance with Directive 2006/66/EC of the European Parliament and of the Council.

Point 1 defines a producer's obligation to register before placing electrical and electronic equipment on the market and to provide National Registers with information about changes with respect to the registration, e.g., change of legal form, company name, company address.

The open wording of Point 1 gives the MS the opportunity to define under his legislation the obligation for a producer who delivers electrical and electronic equipment directly to an end-user in another MS to register within the MS where he's acting. In this way producers acting by

means of distance communication/distance selling can be identified and held responsible more easily.

Point 2 establishes the information required to apply for registration. As the level of information described in Annex V corresponds to that which is currently required by the majority of National Registers, it could be used to define harmonised registration requirements.

Point 3 gives guidance for calculation of registration fees – a reality in some MS.

Point 4 defines common conditions for deregistration. The provision shall apply to enable deregistration of a producer on his own initiative or that of the National Register concerned, e.g., in case of non-compliance or non-performance of duties.

The publication of a producer's registration number within the National Register is taken to be proof of compliance with that producer's obligations in a MS. Thus National Registers must have an accurate and up-to-date public list of (only compliant) producers.

This mechanism will also guarantee the complete and accurate information provided by the producers to National Registers and then to the Commission.

Point 5 sets out the minimum information required for reporting. This is crucial for a harmonised reporting standard. The majority of this information is already asked for by all National Registers under their current National Legislation.

ANNEX V

Application for registration must contain at least the following information

1. Name of the producer, the brand name or trademark on any electric and electronic equipment placed on the market in the Member State and whether the equipment is B2B, B2C or both.
2. Address(es) of the producer: postal code and location, street name and number, country, , telephone number, contact person, email address of the producer and if available, fax number.
3. Information on how the producer meets his responsibilities: individual, collective scheme or financial guarantees.
4. Date of the beginning of the registration
5. National identification code of the producer, including European tax number or national tax number of the producer (if available).
6. Declaration stating that the information provided is true.

Justification for Annex V

Point 1: This is felt to be the minimum relevant data in order to identify a producer of electrical and electronic equipment. Only the brand name or trademark enables National Registers and other producers to identify potential free-riders: a serious threat to fair competition between producers.

Point 2: As the facility for electronic application is a requirement of the Directive, it is reasonable to assume that all producers will have an email address

Point 3: The act of registration provides an opportunity to monitor compliance, including the financial obligations as set out under Article 12 and 13

Point 4: We believe that National Registers should have the flexibility to allow producers who may be registering late, after placing electrical and electronic equipment on the market in previous years, to discharge their responsibility for those previous periods

Point 5: This information is needed in some MS to identify producers uniquely and to invoice fees.

Point 6: As registration will be an on-line process, a formal statement from the producer is required to validate any data provided. The format for this declaration, written or electronically, shall be decided by each MS.

ANNEX VI

Each report must contain at least the following information

1. Reporting period
2. Category of electrical and electronic equipment in accordance with Annex IA of this Directive
3. Type of electrical and electronic equipment
4. Brand names of the electrical and electronic equipment
5. Information on the quantities of electrical and electronic equipment placed on the national market, by weight
6. Information on the quantities of waste of electrical and electronic equipment collected through all routes, re-used, recycled and recovered within that MS, and on separately collected WEEE exported, by weight (if available)

Justification for Annex VI

Point 1: Five years of implementing the Directive has shown that the frequency of reporting directly linked to the way each MS has implemented its requirements. If the main purpose is to supply numbers to the Commission then there is no need for reporting to be more frequent than annual. However, as some National Registers also have to monitor compliance with producers' responsibilities more frequent reporting is necessary in those MS. If the re-cast Directive was to result in a more consistent approach to implementation, then it may be possible to harmonise reporting frequencies and EWRN would be happy to put forward proposals at that time.

Point 2: To check if producer responsibility (individual or collective schemes, financial guarantees, recycling insurance, block account or others) is being properly discharged.

Points 3, 4, 5: Provide the detail necessary to characterize the equipment placed on the market

Point 6: Provides information on quantities of WEEE taken out of the market, which is required to evaluate whether directive targets are being achieved.