



Distance sale of electrical and electronic equipment to consumers

EU-WEEE workshop 9–10 November 2006
in Copenhagen

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Preface

All EU Member States were to implement the rules set out in the EU Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) in their national legislation by 13 August 2005.

One of the challenges of the WEEE Directive is that the requirements in the WEEE Directive also include distance sellers, selling EEE by means of distance communication to end users (private households) in other Member States.

The implementation of the provisions on distance sellers was the topic for a joint EU workshop for TAC members and representatives from the national producer registers, arranged by the Nordic WEEE working group supported by the Nordic Council of Ministers in Copenhagen on 9–10 November 2006.

This report summaries the discussions and the conclusions from the workshop. The report has been prepared by KPMG, Denmark, for the Nordic Council of Ministers.

Summary and conclusions

Survey identifying different approaches

According to Article 8 of the WEEE Directive, the requirements of the Directive also include distance sellers selling EEE by distance sale to end users (private households) in other Member States. The Member States shall ensure that distance sellers comply with the requirements as to producer responsibility, registration, and reporting to producer registers and payment obligations for products sold to end users in other Member States.

Most of the EU Member States have established the required producer registers in the spring of 2006 and therefore have little practical experiences as to how to manage the challenges of distance selling to end users in other EU Member States and how to ensure that distance sellers comply with the requirements of the WEEE Directive.

This seems to be a major challenge, because the Member States have different approaches how to deal with the registration of distance sellers and the distance sellers' reporting to producer registers. This can be concluded from a survey of the implementation of the requirements for distance sellers among Member State WEEE authorities.

There seems to be two main approaches to handling the registration of the distance sellers selling products to end user in other EU Member States:

- Approach 1: Registration of distance sellers in home Member State
- Approach 2: Registration of distance sellers in end user Member State.

As a result of these different approaches, distance sellers may end up paying registration fees many times for the same products or may end up not being obliged to register, report and be part of the WEEE financing at all.

The different approaches, therefore, make it impossible for the authorities in certain cases to ensure that distance sellers comply with the requirements of the Directive and take part in the payment obligations, when products are sold to end users in other Member States by means of distance communication.

Main challenges

This overall challenge concerning distance selling to end users in other EU Member States can be addressed in two ways:

1. Changing the WEEE Directive to the effect that distance sellers selling to end users in other Member States are not part of the producer definition in the Directive. This possibility was mentioned at the workshop, but not further discussed. This solution is rather complicated because it exempts one specific group of persons selling EEE from complying with the requirements of the Directive regarding producer responsibility and financing obligations. Since distance selling is a growing market a growing amount of EEE would need to be regulated in another way.
2. Harmonisation and coordination of the Member States' approaches to distance sellers' registration, reporting, data transmission and financing obligations in order to ensure that the distance sellers comply with the requirements of the Directive.

Harmonisation of the requirements for distance sellers

The need for harmonisation of the EU approaches to requirements for distance sellers was discussed at the workshop. Suggestions and ideas were presented as to how to deal with distance sellers. The main findings were:

- All Member States need to use the same approach to distance sellers in order to ensure that the distance sellers comply with the requirements of the Directive and the payment obligations. This includes harmonisation of:
 - a) Definition of producer and distance sellers.
 - b) Format and procedure for the registration of producers and distance sellers.
 - c) Procedure for reporting and collecting data from the distance sellers.
 - d) Procedure for data exchange and data electronic interface between Member States.
 - e) Procedure for the authorities' enforcement of the requirements of the Directive.
 - f) Procedure as to how the Member States manage the financing obligations of the distance sellers.

When setting up a new common approach for all EU Member States, it is also important to examine the issues mentioned below:

- Confidentiality problems with data and information from distance sellers reported to one Member State register and forwarded to registers or collective schemes in other Member States.
- The possibility of distance sellers being obliged to participate in collective schemes in the end user Member States and the collective schemes to be obliged to accept their membership. Such an obligation would ensure the distance sellers payment for the WEEE financing obligations.
- The possibility of utilising the experience of the VAT and tax system for identification, registration, enforcement etc. of distance sellers.
- Enforcement and legal prosecution of the distance sellers should be possible and not a heavy burden. At the workshop it was suggested, that the authorities in the distance seller's home Member State should be able to enforce and prosecute the distance seller on behalf of the other Member States.
- The possibility of setting up an EU clearing house for dealing with exchange of data and/or financing obligations.
- The possibility of making an internet based database where all Member States report distance selling.

A solution for a harmonised approach was suggested at the workshop. This new approach prescribes that distance sellers are registered in the home country and report all the sales data for the entire EU to the home Member State. The home Member State then exchanges data with the end user Member States to ensure the WEEE financing obligations, which are paid by the distance sellers directly to the end user Member States. The enforcement of this solution implies that the authorities in the home Member State should be able to enforce the requirements and prosecute the distance seller on behalf of the other Member States.

Sammenfatning og konklusion

Undersøgelse identificerer forskellige tilgange til implementering

WEEE Direktivet omfatter ifølge artikel 8 også producenter, der via fjernsalg sælger elektronisk udstyr til slutbrugere (private husholdninger) i andre medlemslande. Medlemslande skal i den sammenhæng sikre, at fjernsalgsproducenter overholder direktivets krav om producentansvar, registrering og rapportering til producentregister samt betalingsforpligtelser for produkter, som leveres til slutbrugere i andre medlemslande.

Hovedparten af EU-medlemslandene har etableret det påkrævede producentregister i foråret 2006 og har derfor begrænset erfaring med fjernsalgsproducenter, og hvordan det sikres, at fjernsalgsproducenter overholder kravene i direktivet.

Håndteringen af fjernsalgsproducenter ser ud til at være en stor udfordring, fordi medlemsstaterne har implementeret reglerne om registrering af fjernsalgsproducenter og fjernsalgsproducenters rapportering til producentregistret ud fra forskellige tilgangsvinkler. Dette er konklusionen af den undersøgelse om implementeringen af kravene for fjernsalgsproducenter, som er udført blandt medlemslandene, som led i denne WEEE-workshop.

Undersøgelsen viser, at medlemslandene som udgangspunkt har anvendt to forskellige tilgange til, hvordan fjernsalgsproducenter, der sælger produkter til slutbrugere i andre medlemslande, skal registreres:

- Metode 1: Fjernsalgsproducenten registreres i dennes hjemland
- Metode 2: Fjernsalgsproducenten registreres i slutbrugers hjemland

Konsekvenserne af disse forskellige implementeringsmetoder er, at fjernsalgsproducenter kan være forpligtet til registrering i både eget og slutbrugers hjemland, og de kan dermed komme til at betale registreringsgebyrer for det samme produkt flere gange.

Alternativt, at fjernsalgsproducenter hverken er forpligtet til registrering i eget eller slutbrugers hjemland og dermed slet ikke indgår i WEEE-systemets registrering, rapportering og betalingssystem. I denne situation har myndighederne således ikke mulighed for at sikre, at fjernsalgsproducenter overholder direktivet og opfylder deres betalingsforpligtelser.

Udfordringer

Overordnet set er der to løsningsmodeller for, hvordan fjernsalgsproblematikken kan håndteres i relation til direktivet:

1. WEEE direktivet kan ændres, således at fjernsalgsproducenter, der sælger produkter til slutbrugere i andre EU-medlemslande, ikke er omfattet af direktivets producentdefinition og dermed ikke er omfattet af krav om registrering, rapportering og betalingsforpligtelser. Muligheden blev nævnt på workshopen, men ikke yderligere diskuteret. Denne løsningsmodel har væsentlige konsekvenser, fordi den undtager en specifik producentgruppe – nemlig fjernsalgsproducenter, der sælger elektronisk udstyr til slutbrugere i andre EU medlemslande – fra at indgå i direktivets producentansvar og betalingsforpligtelser. Da fjernsalg samtidig er et voksende marked, vil denne løsning også nødvendiggøre, at der indføres andre reguleringsmekanismer for denne voksende mængde af elektronisk udstyr og affald.
2. Medlemsstaternes regler og krav til fjernsalgsproducenter harmoniseres, således at det sikres, at fjernsalgsproducenter opfylder direktivets bestemmelser om registrering, rapportering og betalingsforpligtelser.

Harmonisering af krav til fjernsalgsproducenter

På workshopen diskutererede deltagerne forskellige muligheder for harmonisering af krav til fjernsalgsproducenter. Der blev herunder bl.a. præsenteret et forslag til, hvordan en harmoniseret fælles EU-løsning kunne se ud.

Dette forslag tager udgangspunkt i metode 1 og er baseret på, at fjernsalgsproducenter registreres i hjemlandet og rapporterer alle data for solgte produkter i hele EU til hjemlandets register. Hjemlandet udveksler herefter salgsdata med slutbrugerlandet til brug for opgørelser af fjernsalgsproducentens betalingsforpligtelser, der betales direkte til slutbrugerlandet. Dette forslag forudsætter bl.a., at myndighederne i fjernsalgsproducentens hjemland har mulighed for at håndhæve kravene i direktivet og retsforfølge fjernsalgsproducenten på vegne af det andet medlemsland. En fælles og ensartet implementering af direktivets bestemmelser rejser imidlertid også behov for harmonisering af følgende:

- Definition af producent og fjernsalgsproducent.
- Dataformater og procedurer for registreringer af producenter og fjernsalgsproducenter.

- Procedurer for rapportering og indsamling af data fra fjernsalgsproducenten.
- Procedure for dataudveksling, herunder elektronisk udveksling af data mellem medlemslandene.
- Procedure for myndighedernes håndhævelse af direktivets bestemmelser.
- Procedure for, hvordan medlemsstaterne håndterer fjernsalgsproducenternes betalingsforpligtelser.

Der blev på workshoppen også peget på følgende forhold, som er væsentlige at undersøge nærmere som led i en eventuel fælles EU-implementeringsstrategi:

- Problemstillinger i relation til udveksling af fortrolige data og andre informationer om fjernsalgsproducenten fra et medlemslandsregister til WEEE-registret eller kollektive ordninger i et andet medlemsland.
- Muligheder for, at fjernsalgsproducenten gøres forpligtet til at deltage i en kollektiv ordning i slutbruger-medlemslandet, og at den kollektive ordning bliver forpligtig til at acceptere fjernsalgsproducentens optagelse i ordningen. En sådan ordning vil sikre, at fjernsalgsproducenten overholder direktivets betalingsforpligtelser.
- Muligheder for at anvende erfaringer fra moms- og skattemyndigheders registre med henblik på at identificere og registrere fjernsalgsproducenter.
- Administrativ og retlig håndhævelse af fjernsalgsproducenter bør være muligt og ikke væsentligt ressourcekrævende. På workshoppen blev det foreslået, at myndighederne i fjernsalgsproducentens hjemland bør kunne forestå håndhævelsen på vegne af myndighederne i slutbrugers hjemland.
- Muligheden for, at der etableres et »EU clearing house«, som varetager udveksling af data og informationer samt eventuelt også de finansielle forpligtelser.
- Muligheden for at etablere en internet-baseret database, som medlemsstaterne kan benytte til udveksling af data m.v. om fjernsalgsproducenter.

Introduction

All EU Member States were to implement the rules set out in the EU Waste Electrical and Electronic Equipment (WEEE) Directive in their national legislation by 13 August 2005. Under the Directive, all EU Member States are to introduce specific rules on collection, waste treatment and reuse or recycling of WEEE and to make producers and importers responsible for the environmentally acceptable handling of these products. This includes that each Member State has to establish a producer register providing details of producer/importer, product categories and products put on the market. Producers and importers are responsible for marking their products, for registration in EU Member State producer registers and for annual reporting of information to the producer registers on marketed product quantities as well as the WEEE quantities managed by the producer/importer.

The WEEE Directive has been transposed in almost all EU Member States, and the majority of the Member States have established the required producer registers in the spring of 2006.

One of the challenges of the WEEE Directive is that the requirements in the WEEE Directive also include distance sellers, selling EEE by means of distance communication to end users (private households) in other Member States. According to Article 8, para 4, of the WEEE Directive, the Member States shall ensure that these distance sellers also comply with the requirements of the WEEE Directive. This means that the Member States shall ensure that distance sellers comply with the requirements as to producer responsibility, registration, and reporting to producer registers and payment obligations when products are sold to end users in another Member State by means of distance communication. See Appendix 1 concerning the provisions of the WEEE Directive that are topical for distance sellers.

How to ensure this depends on how the Member States have implemented the provisions on distance selling into their national legislation.

The purpose of the workshop

The implementation of the provisions on distance sellers was the topic for a joint EU workshop for TAC members and representatives from the national producer registers, arranged by the Nordic WEEE working group supported by the Nordic Council of Ministers in Copenhagen on 9–10 November 2006.

The purpose of the workshop was to create a survey of Member States' implementation of the requirements for distance sellers and to facilitate cooperation at EU level with a view to coordinating Member States' measures towards distance sellers.

Most of the EU Member States have established the required producer registers in the spring of 2006 and therefore have little practical experiences as to how to manage the challenges of distance selling to end users in other EU Member States and how to ensure that distance sellers comply with the requirements of the WEEE Directive. The purpose of this workshop was, therefore, also to clarify the need for cooperation and harmonisation at EU level in respect of the requirements for distance sellers in order to ensure producer responsibility for products, sold to end users in other EU Member States by means of distance communication. 31 participants from 18 Member States participated in the workshop. The programme and list of participants are included in Appendix 2.

Two consultants from KPMG, Denmark, participated in the preparation of the workshop and in the workshop itself and have prepared this final report.

The results from the workshop shall also contribute to the European Commission's review of the WEEE Directive and the further implementation process in the Member States.

Survey of the implementation of the requirements for distance sellers

In connection with the preparation of the workshop, the Nordic WEEE working group sent out a questionnaire to the WEEE authorities in the 25 Member States, the candidate countries Romania and Bulgaria, and the Nordic countries Norway and Iceland. The questionnaire concerned distance sale of EEE to consumers and how the Member States have implemented the requirements set out in Article 8, para 4, of the Directive. 19 out of 29 countries replied to the questionnaire. A survey of the replies is presented in Appendix 3.

The survey of the replies shows that the national implementation of the requirements for distance sellers differs significantly. There seems to be two main approaches in the national legislations of Member States regarding the requirements for the distance sellers selling products to private end users in other EU Member States:

Approach 1: Registration of distance sellers in home Member State register

Approach 1 is based on the registration of distance sellers in the register in their home EU Member State.

Distance sellers, located in Member States using approach 1 and selling products to other EU Member States, are obliged

1. to be registered in the producer register in their home Member State;
2. to report to the producer register in the home Member State the amount and type of products sold to consumers in the end user Member States;
3. to take part in the financing systems in the Member States, where the end use takes place.

Following approach 1, distance sellers selling products to end users located in another Member State using approach 1, are also not obliged to be registered in the producer register in the Member States to which they sell products, but are expected to be registered in and to report to their home Member State register.

Approach 2: Registration of distance sellers in end user Member State register

Approach 2 is based on the registration of foreign distance sellers in a register in the EU Member State of the end user.

Distance sellers from other EU Member States, selling products to end users in another EU Member State using approach 2, are obliged

1. to be registered in the producer register in the end user Member States;
2. to report to the producer register in the end user Member States the amount and type of products sold to end users in those Member States;
3. to take part in the financing approach in the end user Member State.

Following approach 2, distance sellers located in Member States using approach 2 and selling products to end users in other Member States, are not obliged to be registered in their home Member State register, but are expected to be registered in and to report to the end user Member State register.

According to the survey of replies, it seems that other approaches are also used, e.g. Member States that use both approaches 1 and 2 and therefore register both distance sellers located in the home Member State and selling EEE to end users in other EU Member States, and distance sellers located in other Member States selling products to end users in their own country.

Challenges of approaches 1 and 2

These two different approaches to dealing with distance sellers may reveal two inappropriate situations:

1 Lack of registration, reporting and financing

- Distance sellers, located in Member States using approach 2 and selling products to end users in Member States using approach 1, are not obliged to register, report products sold to end users or participate in the WEEE financing obligations in any Member State. In this situation, there seems to be a “gap”, which needs to be coordinated at EU level in order to avoid the lack of registration, reporting and payment for these distance sellers.

2 Double registration, reporting and financing

- Distance sellers, located in Member States using approach 1 and selling products to end users in Member States using approach 2, are obliged to register and report products sold to both the home Member State register and the end user Member State register. This situation also needs to be coordinated at EU level in order to avoid the distance sellers' double registration, reporting and perhaps payment of the registration fee.

When distance sellers, located in Member States using approach 1 sell products to end users in Member States using the same approach 1, the approach works. The approach also works when distance sellers, located in Member States using approach 2 sell products to end users in Member States using approach 2.

However, when distance sellers, located in Member States using approach 1 sell products to end users in Member States using approach 2 or the other way around, the registration and reporting approach does not work. In these situations distance sellers may end up paying registration fees many times for the same products or may end up not being obliged to register, report and comply with the WEEE financing obligations at all.

Cooperation at EU level is required in order to manage and avoid situations like these and to ensure that the distance sellers comply with the requirements of the Directive.

These challenges are presented in the enclosed flow chart (Appendix 4). The flow chart shows how the requirements for registration, reporting and financing are managed in approach 1 and approach 2, respectively.

Conclusions of the survey

The conclusions of the survey, based on the replies to the questionnaire are:

- The Member States have different approaches as to how to manage the registration of distance sellers and the distance sellers' reporting to producer registers.
- The Member States' different approaches make it impossible in certain cases to ensure that distance sellers comply with the requirements of the Directive.

The Member States' approaches to the registration of distance sellers and to distance sellers' reporting to producer registers need to be harmonised in order to ensure that the distance sellers comply with the requirements of the Directive and the financing obligations, when products are sold to end users in another Member State by means of distance communication.

Workshop on the harmonisation of the requirements for distance sellers

Introduction to the workshop

The topic of the workshop on the harmonisation of the requirements for distance sellers was introduced by speakers who presented from their perspective different issues relating to distance sellers, see the programme in Appendix 2.

These presentations among other things revealed that several research studies on the implementation of the WEEE Directive and the producer responsibility have been launched. These studies indicate that there is a substantial need for simplification, development and harmonisation of the WEEE-requirements for registration, reporting and payment obligations. Especially for distance selling, it is also important to recognise that the market for distance selling is expected to grow significantly in the future.

The harmonisation of the requirements for distance sellers seems therefore not only to be a major but also a growing challenge.

How to respond to this challenge was discussed in working groups during the workshop, focusing on the advantages/disadvantages of approaches 1 and 2 in relation to the registration of distance sellers, reporting to the producer register, financing obligations and enforcement. The main inputs from the working group discussions are summarised below:

Advantages and disadvantages of approach 1

Facts of approach 1: Distance sellers register in the home Member State, report to the home Member State the amount and type of products sold to individual Member State end users and participate in WEEE financing obligations in end user Member States.

The advantages/disadvantages of approach 1:

- This approach is easy to manage for the distance sellers, because registration, reporting etc. are managed in the home Member State. This means that the distance sellers only have to cope with one registration and register-fee in the home Member State, the home authority, the home language, the home WEEE system etc.

- The management of this approach is more complex for the authorities because of the heavy burden of data collection and data exchange. The home Member State has to obtain data from distance selling products in all the Member States and pass on the data to the end user Member State in order to ensure that the distance sellers participate in the financing obligations in the end user Member State.
- This approach makes it easier for the authorities to identify “free riders”, which do not register and to enforce the registration etc. of “free riders”, because the distance sellers register in the home Member State.
- Enforcement and legal prosecution of the distance sellers regarding registration and reporting are easier, when the distance sellers are registered in the home Member State.
- Enforcement, regarding financing obligations may be difficult for the home Member State, because the home Member State has to be aware of and have information about the different financing obligations in all the EU Member States, to which the distance sellers sell products.

Special challenges of approach 1:

- When using the approach 1, it is necessary to exchange data from one Member State to another. There may be confidentiality problems with data and information from distance sellers reported to a home Member State register and forwarded to other registers/collective schemes in other Member States. These problems and how to manage the data exchange should be clarified.
- It should also be clarified, whether the distance sellers have to participate in the collective schemes in the end user Member State and how this can be arranged.
- There is some uncertainty about the possibilities for the home authorities to enforce and prosecute the distance sellers on behalf of another Member State. This uncertainty should be clarified.
- The advantages of setting up an EU clearing house for dealing with exchange of information between Member States and/or the financing obligations in the Member State were mentioned. This possibility should also be considered.
- It was also suggested that data could be exchanged by reporting to an internet-based database (for instance EIONET).

Advantages and disadvantages of approach 2

Facts of approach 2: Distance sellers register in the end user Member State, report to the end user Member State the amount and type of prod-

ucts sold to end users in the Member State and participate in WEEE financing obligations in end user Member States.

The advantages/disadvantages of approach 2:

- This approach involves a heavy burden on the distance sellers because they have to cope with registrations, reporting, authorities, fees, languages etc. in all EU Member States and have to take into account differences in legislation and varying Member State scopes. Distance sellers also need information on the different WEEE obligations in EU Member States which is very difficult to obtain.
- This approach makes the data collection easier for the authorities, because distance sellers are reporting directly to the end user Member State.
- It is easier for the authorities to ensure that the distance sellers pay registration fee and guarantees at the time of registration, when the distance sellers register in the end user Member State.
- Registration in the end user Member State makes it possible also to register distance sellers from outside the EU. Distance sellers therefore cannot “benefit” from moving out of the EU.
- Registration in the end user Member State makes it easier to ensure that distance sellers participate in collective schemes in the end user Member State, if that is necessary or the distance seller prefers to do so.
- Confidential data may be easier to obtain when it is sent directly to the Member State which is responsible for ensuring the WEEE payments.

Special challenges of approach 2:

- In approach 2, the biggest challenges are how to ensure that the distance sellers register in the end user Member State and how to identify distance sellers, which do not register (“free riders”). This seems to be very difficult for the authorities in the end user Member State.
- Legal prosecution and enforcement can also be very difficult in approach 2, because the distance seller is physically located in another Member State. There is some uncertainty about the possibility to enforce and prosecute a distance seller, which is located in another EU Member State. This uncertainty should be clarified.

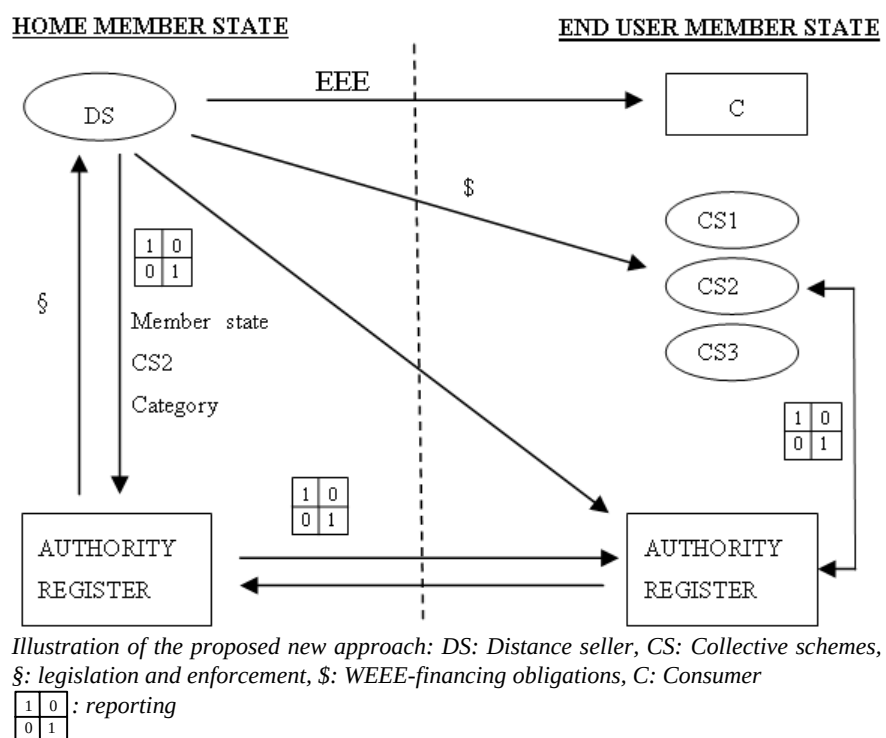
Suggestion for a new approach

One of the working groups also presented a new approach as to how registration, reporting and financing obligations of distance sellers can be managed. This new approach is primarily based on approach 1, but also includes some modifications and changes as a result of the challenges of approach 1. The suggested new approach is based on the following:

1. The distance sellers register in the home Member State and report to the home Member State the amount and type of products sold to the individual Member State's end users and participate in WEEE financing obligations in the end user Member States. The home Member State informs the end user Member States of the reported amount and type of products sold to consumers in other Member States.
2. As part of the registration, the distance sellers should sign a declaration for reporting the amount and type of products sold to end users in other Member States and for complying with the financing obligations and – under certain circumstances – the requirements of collective schemes in the end user Member States. The format and procedure for this declaration should be harmonised and also cleared by the end user Member State in order to take into account the different WEEE obligations in the EU Member States. The format of such a declaration will probably also imply a harmonisation of the WEEE rules for distance sellers. Accordingly, the WEEE rules should indicate that home Member States as part of the registration also require that distance sellers comply with the WEEE rules in the Member States to which products are sold. As part of the registration, it was also mentioned that distance sellers should be obliged to participate in collective schemes in end user Member States and the collective schemes should be obliged to accept their applying for membership.
3. As part of this new approach, an agreement should also be made between the home and the end user Member State which coordinates the management and organisation of data collection, data exchange and enforcement. This includes legislation and procedures for:
 - data collection from the distance sellers;
 - monitoring/verification of the data collected from the distance sellers;
 - data transmission from home Member State to the end user Member State. In that area, an EU clearing house for the exchange of information, e.g. by using the EIONET platform, was mentioned;
 - request in case of non-compliance and how to manage this;
 - inspection. Distance sellers should be obliged to keep sales records for a number of years for the purpose of inspections;

- enforcement. The authorities in the distance seller's home Member State should be able to enforce and prosecute the distance seller on behalf of other Member States. This might require new legislation.
 - In the area of enforcement, cooperation with the VAT authorities and using information on the distance sellers from the VAT and tax systems were mentioned.
4. The WEEE financing obligations should be paid by the distance sellers directly to the end user Member State. Based on the reported amount and type of products sold directly to end users in the end user Member State, the WEEE bodies of the end user Member State (producer register/collective scheme) send an invoice to the distance sellers who should pay the financing obligations directly to the WEEE bodies in the end user Member State.
 5. If problems arise with confidentiality, another solution was suggested: The distance sellers register in the home Member State, but report directly to the end user Member State body the amount and type of products sold to consumers in the end user Member State and comply with the WEEE financing obligations in the end user Member State. In this solution, there is no problem with exchange of confidential data between the Member States' registers.

This new approach was illustrated by one of the working groups at the workshop as shown below.



Appendices

Appendix 1: Selected provisions of the WEEE Directive related to distance sellers

In relation to distance sale of EEE to consumers (B2C), the following provisions of the WEEE Directive are particularly topical:

Article 3, Definitions:

‘producer’ means any person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽¹⁾:

- (i) manufactures and sells EEE 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 subpoint (i), or
- (iii) imports or exports EEE 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 subpoints (i) to (iii);

‘distributor’ means any person who provides EEE on a commercial basis to the party who is going to use it;

‘WEEE from private households’ means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households;

Article 8, point 4, Financing in respect of WEEE from private households
Member States shall ensure that producers supplying EEE by means of distance communication also comply with the requirements set out in this Article for the equipment supplied in the Member State where the purchaser of that equipment resides.

Article 12, Information and reporting

Member States shall draw up a register of producers and collect information, including substantiated estimates, on an annual basis on the quantities and categories of EEE put on their market, collected through all routes, reused, recycled and recovered within

the Member States, and on collected waste exported, by weight or, if this is not possible, by numbers.

Member States shall ensure that producers supplying EEE by means of distance communication provide information on the compliance with the requirements of Article 8(4) and on the quantities and categories of EEE put on the market of the Member State where the purchaser of that equipment resides.

Appendix 2: Workshop programme and list of participants

Workshop programme

TAC members' informal workshop on WEEE producer responsibility and registering of distance sellers

9-10 November 2006

The Danish Architecture Centre, Copenhagen, Denmark

Time	Day 1
9:30 – 10:00	Registration and coffee
10:00 – 10:20	Introduction and welcome (Marianne Moth, Head of Soil & Waste Division, Danish EPA)
10:20 – 10:50	Status, studies and Commission's view (Kurt van der Hertten, EU Commission, DG Environment)
10:50 – 11:00	SHORT COFFEE BREAK
11:00 – 11:30	State run register (Susanna Ollila, Pirkanmaa Regional Environment Center, Finland) How are distance sellers handled? Which problems arise? Does a state run register provide special arrangements?
11:30 – 12:00	Privately run register (Ulf Gilberg, WEEE-System, Denmark) How are distance sellers handled? Which problems arise? Does a privately run register provide special arrangements?
12:00 – 13:00	LUNCH
13:00 – 13:30	Collective schemes (Jörgen Schultz, EL-Kretsen, Sweden) How are distance sellers handled? Which problems arise?
13:30 – 14:00	Presentation of the approaches 1 and 2 and the questions in the background paper for the working groups (consultants from KPMG)
14:00 – 14:10	Arranging for the working groups
14:10 – 14:30	COFFEE BREAK
14:30 – 17:00	Working group: 4 groups with 9 participants. A1-A2) How to register distance sellers (registration, reporting, financing) B1-B2) Enforcing the requirements for distance sellers
18:00	DINNER at the restaurant Bastionen & Løven, Christianshavns Voldgade 50, DK-1424 Copenhagen K, tel. +45 32 950 940

Time	Day 2
9:00 – 9:40	Presentations from the working groups (group rapporteurs)
9:40 – 10:40	Discussions
10:40 – 11:00	COFFEE BREAK
11:00 – 11:20	Conclusions (consultants from KPMG)
11:20 – 11:50	How to go forward with the results
11:50 – 12:00	End of meeting
12:00 – 13:00	LUNCH

List of participants

Name	Position	Organisation	Country	Website	E-mail	Telephone	Preference
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Name	Position	Organisation	Country	Website	E-mail	Telephone	Preference
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Appendix 3: Survey of the questionnaire

X = Yes

O = No

Have you implemented the requirements for distant sellers?

Does this apply to B-to-C sales?

Does this apply to B-to-B sales?

In case of company acting as distant seller, who has to register in your producer register? Is it:

Company selling products abroad to your country (foreign companies)?

Company selling products from your country to abroad (local companies)?

Which information they have to report? Is it:

Amount and type of products sold to your local end user?

Amount and type of products sold to other Member States end user?

Do they have to give information about to which individual Member States they sell?

Do they have to take part of the requirements of WEEE waste management in your Member State? Do they have to:

Take part of expences in your country?

Take part of the compliance scheme in your country?

Comments/other requirements:

	Austria	Norway	Finland	Sweden	Netherlands	Slovenia	Latvia	Germany	Romania	UK	Ireland	Estonia	Bulgaria	Hungary	Denmark	Slovak Republic	Spain	Belgium	Italia
Have you implemented the requirements for distant sellers?	X	X	X	X	X	X	X	X	O	X	X	X	X	X	X	X	O	O	X
Does this apply to B-to-C sales?	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	O	O	
Does this apply to B-to-B sales?	O	X	O	X	X	X	X	O	X	X	O	X	X	X	O	X	O	O	
Company selling products abroad to your country (foreign companies)?	O	O	O	O	O	O	O	X	O	X	X	X	X	X	X	X	X		
Company selling products from your country to abroad (local companies)?	X	X	X	X	X	X	X	X	X	X	X	X	O	O	O	O	O	X	
Amount and type of products sold to your local end user?	O	O	O	X	X	O	X	X	X	X	X	X	X	X	X	X	X	X	X
Amount and type of products sold to other Member States end user?	X	X	X	X	X	X	X	X	O	O	O	X	O	O	O	O	O	X	O
Do they have to give information about to which individual Member States they sell?	X	X	X	X	O	X	X	O	O	O	O	O	O	O	O	O	X	O	
Do they have to take part of the requirements of WEEE waste management in your Member State? Do they have to:																			
Take part of expences in your country?	O	O	O	O	O	X		O	X	X	X	X	X	O	X	X	X		
Take part of the compliance scheme in your country?	O	O	O	O	O	X	X	O	X	X	X	X	X	X	X	X			
Comments/other requirements:	1	2	4	5	6	7			8	9	10					11	12	13	14

Comments/other requirements

Austria

1: We oblige Austrian distance sellers

1) to report in Austria the amounts they sell in other member states

2) to take part of the financing systems in the member state, where the end user takes place!

We hope, all other member states do it exactly the same way, so they oblige their distance sellers to contribute in Austrian collection and recovery systems.

Norway

2: Exporting companies has to report to the producer register. If the exporter is a producer as well they will be member of a takeback company and then the takeback company will do the reporting. Foreign companies don't have to register

If EE-products are sold to private households in other EEA states by distant selling, the exporter shall ensure that the requirements in the country of destination relating to the financing of the collection, recycling and other treatment of the products when it ends up as waste are complied with.

One of the tasks for the Norwegian producer register is to provide, by request, the authorities of other EEA states data on the export of EE products and EE waste from Norway.

Finland

4: Registration applies to all Finnish companies that either produce or import products to Finland and the companies that export straight to consumers in other member States. For companies exporting out of Finland, there are no legal provisions other than registration and reporting (only B-to-C end user sales).

Sweden

5: Producers must register all products sold/exported to end-users. End user is a buyer, which is not considered producer according to national legislation in the country the product is sold to

Distance selling: selling a product to a user in another country under a contract made directly with the user, exclusively by means of distance communication, when this user is not to be regarded as a producer under the corresponding regulations in the other country.

Expenses for distant selling should be cleared between the member states

Netherlands

6: weee management decree, section 1

E: producer: any person who, irrespective of the selling technique used:

(i) manufactures and sells electrical and electronic equipment under his own brand, or

(ii) resells under his own brand electrical and electronic equipment produced or imported and sold by other suppliers, unless the brand of a producer, as defined above under (i), appears on the equipment; or

(iii) in the pursuit of his profession or conduct of his business imports or exports electrical and electronic equipment into or out of the Netherlands;

with the exception of any party who exclusively provides finance under or pursuant to a finance agreement;

explanatory memorandum:

Definition (e) prescribes who constitutes a producer. It is a broad definition. For example, one of the things it indicates is that the sales method is irrelevant. Hence, equipment sales made via the Internet (electronic selling) and other distance selling techniques referred to in Directive no. 97/7/EC of the European Parliament and the European Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC L 144) are

also covered by this Decree. Any party that imports equipment is also considered to be a producer. In practice it has emerged that it is not always clear who is the importer of the equipment. It is possible to determine whether an item of equipment has been imported from the VAT details on the invoice. If an entrepreneur has an invoice stating that foreign VAT has been raised, or that the zero rate of VAT has been applied, then the equipment has been 'imported' and the enterprise in question is considered to be the producer in the sense of this Decree. Parallel importers are also covered by this definition and are therefore producers in the sense of this Decree. As such, they have the same obligations as other producers. For that matter, any party who exports equipment is also a producer in the sense of this Decree. When equipment is sold from the Netherlands (e.g. via the Internet) and delivered to another country (whether a member state of the European Union or not), the producer (i.e. the party exporting the equipment) has obligations in the Netherlands under this Decree. Any party that exclusively provides finance under a finance agreement is not considered to be a producer, unless it also performs the other activities referred to in Section 1, definition (e), items (i) through (iii), in which case the exception does not apply and the party is considered to be a producer.

It is a rather soft obligation and we do not enforce it (no priority), because they do not have obligations for the end of life stage of their products, because it is exported

Slovenia

7: Just regarding obligations in accordance with EEE put on the national market.

Romania

- 8: Regarding our legislation (GD 448/2005), producers supplying electrical and electronic equipment for export by means of distance communication have to comply also the following requirements for the equipment supplied in the Member State where the purchaser of that equipment resides:
- Producers have the obligation for financing of the collection, treatment, recovery and environmentally sound disposal of historical WEEE from private households deposited at collection facilities,
 - For products put on the market later than 31 December 2006 each producer shall be responsible for financing the operations referred to in paragraph 1 relating to the waste from his own products. The producer can choose to fulfill this obligation either individually or by joining a collective scheme
 - When placing a product on the market, the producers provide a guarantee showing that the management of all WEEE will be financed and that producers clearly mark their products. This guarantee shall ensure that the all operations relating to this product will be financed. The guarantee may take the form of participation by the producer in appropriate schemes for the financing of the management of WEEE, a recycling insurance or a blocked bank account.
 - The costs of collection, treatment and environmentally sound disposal shall not be shown separately to purchasers at the time of sale of new products
 - The financing of the costs of the management of "historical wastes" shall be provided by one or more systems to which all producers, existing on the market when the respective costs occur, contribute proportionately, e.g. in proportion to their respective share of the market by type of equipment.
 - By 3 February 2011, producers may inform the purchaser, at the time of sale of a new product, about the costs of collection, treatment and disposal in an environmentally sound way related to products of Annex 1A, except for the products of category 1 of the same annex for which the date is 3 February 2013. The costs mentioned shall not exceed the actual costs incurred by producers.
 - Producers of EEE shall provide informations about quantities and categories of EEE put on the market regarding:
 - Quantities and categories electrical and electronic equipment put on their market;
 - Quantities and categories electrical and electronic equipment collected through all routes, reused, recycled and recovered;
 - Collected waste exported, by weight or, if this is not possible, by number

UK

9: Foreign companies, selling products abroad to UK have to register in UK, if the producer registers a legal presence in the UK (e.g. registers a company), else the importing distributor(s) must register as a producer of EEE for sales in bulk or for resale. Individual direct sales are not included.

Local companies, selling products from UK should inform the UK register of producers that they sell abroad by providing confirmation that they intend to comply with the WEEE obligations of the other state(s).

Non-resident producer or its importing distributor will have obligations. UK producers who only export to another state; and individual direct sales will not have obligations

Ireland

10: Records of sales to other Member States must be retained for 6 years following the year transactions are completed and must be made available on request to the Competent Authority

Slovak Republic:

11: They have to:

- register with Recycling Fund
- and pay contribution to the Recycling Fund.

Spain

12: Foreign companies should be register in Spanish producer register by a legal representative in Spain, However this requirements has not still implement. Local companies should be register in Spanish producer register if the company sells products in Spain and abroad, but not if the company only sells all of its products abroad.

Belgium

13: The requirements are not implemented for companies exporting out of Belgium. For import the definition of “producer” is applicable to the Belgian entities.

In BE, there is no formal registration procedure. Companies are “automatically” registered when they join the collective scheme or file in an individual waste management plan. However, for all WEEE provisions (including distant sales), the definition of producer applies to entities bringing products on the Belgian market and not for the exporting companies

For companies exporting out of BE, there are no legal provisions, for companies importing, the definition of “producer” and the other legal provisions under national WEEE legislation are applicable, including provisions for financial guarantees etc.

Italy:

14: The problem of distance selling is still very relevant, and we do not have any solution, at present. In the Italian decree we have postponed the solution to another decree, to be produced by the Government. We are very interested in the solutions that you could propose. As I used to say in the TAC meetings, Italy thinks that only a European register could solve the problem, but no MS seems to support our position. At present, according to the Treaty, there is no system to avoid a consumer to buy an appliance in another member state, and to receive it by post; and you can not put any restriction to the free movement of goods. We are very interested to know if any other member state can give us suggestions.

Appendix 4: Flow chart on approach 1 and 2, regarding the registration, reporting and financing obligations for distance sellers

B2C: Distance seller (B) selling products to end users (C) in other EU MS

