

**EWRN**



**european weee  
registers network**

**Proposal for the implementation of the ‘authorised  
representative’ under Directive 2012/19/EU (‘WEEE2’)**

**July 2013**



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## 1 Introduction

In typical commercial situations when electrical and electronic equipment ('EEE') moves from one member state ('MS') to another, the importer, as per the producer definition in the recast WEEE Directive ('WEEE2'), is the "producer" and will fulfill all the responsibilities of a producer, including registering, reporting and provision of financial guarantees etc. (see Figure 1 below).

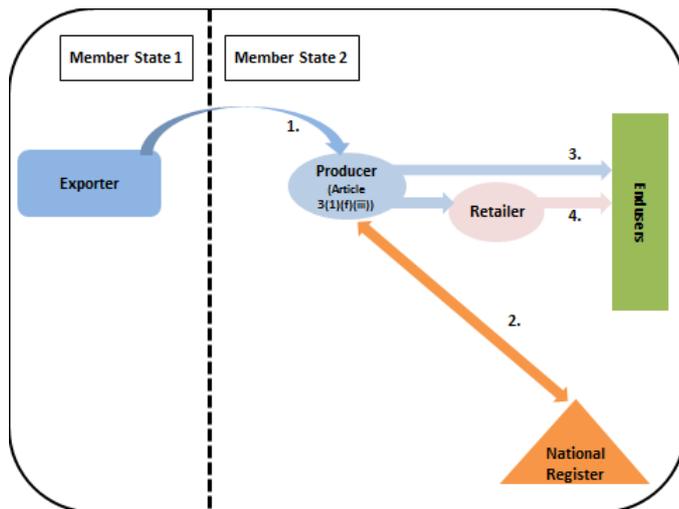


Figure 1

**Notes:** Exporter in MS1 sells EEE to importer in MS2 (1.). Normal situation where importer (Article 3(1)(f)(iii)) in MS2 assumes producer obligation and registers with and reports to the national register in MS2 (2.) all amounts of EEE placed on the market in MS2 (3. and 4.).

However there are some situations when the exporter wishes to assume all the obligations of the producer in the other MS. Previously in this latter case, under the original WEEE Directive ('WEEE1'), there were many different regulations across the EU that had to be fulfilled by the exporter which caused extra financial or administrative burdens for these companies. WEEE2 has introduced the concept of an Authorised Representative ('AR') by way of exception to the norm as outlined in paragraph 1 above in order to reduce these burdens (see Figure 2 below).

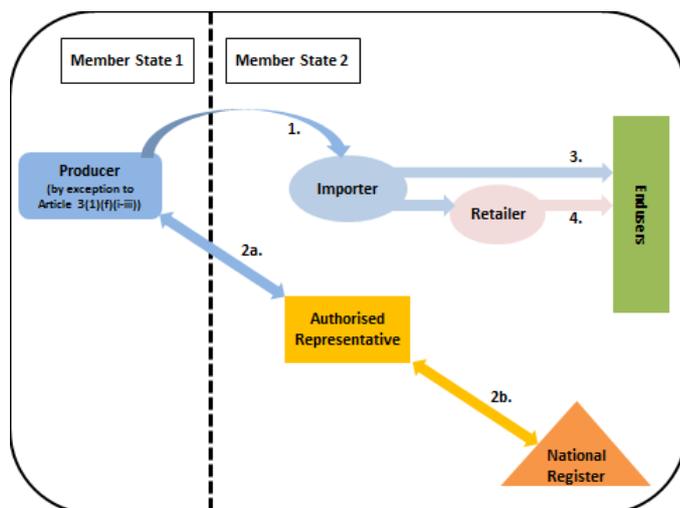


Figure 2

**Notes:** Exporter in MS1 sells EEE to importer in MS2 (1.). Under Article 3(1)(f)(iii) the importer in MS2 would normally be the producer and would have to register and report to the national register in MS2 (Fig 1). Article 17(1) allows the exporter in MS1, by way of exception to normal rules to assume the obligations of a producer in MS2, and he does so by appointing an AR in MS2 (2a.). The AR in MS2 registers the exporter established in MS1 as a producer in MS2 (2b), reports the quantities placed on the market in MS2 by the “producer” and fulfills all other producer responsibilities in MS2 (2b.) on his behalf. Under these circumstances the importer in MS2 is under no obligation to register or to report the amounts of EEE (from exporter in MS1) placed on the market in MS2 (3. and 4.).

References to the AR can be found in preamble No. 8, Articles 16, 17 and Annex X WEEE2.

The European WEEE Registers Network (‘EWRN’) has consulted several stakeholders (EU legislators, EU Commission, producers and trade associations) to understand how the concept of AR will work in practice.

***EWRN maintains that in order for the concept of AR to work there must be a harmonized approach by all MS when implementing Article 17 into national laws and proposes the following approach to ensure the intended benefits to producers and other stakeholders are achieved and to avoid differing interpretations arising.***

## 2 Target group

This proposal is intended for stakeholders engaged with the national transposition of WEEE2 into national law.

## 3 Reasons for introducing an Authorised Representative under WEEE2

Under WEEE1 companies, wishing to take on producer obligations in MS where they were not established had faced dissimilar levels of regulations. For example, in some MS these producers needed to establish a legal seat in that MS where they placed EEE on the national market to be compliant with national regulations. Alternatively other MS required only a legal presence on their

territory to be responsible for the compliance of the producer in the MS. The introduction of the AR in WEEE2 is an attempt to deal with these and other difficulties.

*“In order to fulfill the obligations pursuant to this Directive in a given Member State, a producer should be established in that Member State. By exception, to reduce existing barriers to the proper functioning of the internal market and administrative burdens, Member States should allow producers that are not established on their territory, but that are established in another Member State, to appoint an authorised representative to be responsible for fulfilling the obligations of that producer under this Directive.”<sup>1</sup>*

## 4 Concept of an Authorised Representative used in previous Directives

The idea of the appointment of an AR in WEEE2 is not unique as it is already recognised and used in other EU directives<sup>2</sup>. The Commission has issued a “Guideline for Authorised Representatives”<sup>3</sup> that clarifies the role of an AR. The significant difference of the AR under WEEE2 is that an AR must be appointed in each MS where the producer places EEE on the market other than the MS where he is established (Articles 17 and 3(1)(f)).

## 5 Authorised Representative – a proposal for implementation

### 5.1 Producer definition

The different producer types are defined under Article 3(1)(f).

### 5.2 Voluntary and Mandatory appointment of an Authorised Representative?

Sub-articles 17(1) and (2) differ in that under Article 17(1) a producer, as defined in Article 3(1)(f)(i-iii), may voluntarily choose to appoint an AR in a MS where he is not established. If producers choose this option WEEE2 obliges each MS to ensure they can proceed.

But, under Article 17(2), for a producer (selling by means of distance communication to end users, Article 3(1)(f)(iv)) it is mandatory, in every situation, to appoint an AR.

From the outset it should be noted that the AR option under Article 17(1) is offered by way of exception to the general rule. The exception to appoint an AR can only apply when a “producer” (exporter) who is placing EEE on a market in another MS where he is not established wishes to assume all the obligations of a producer in that other MS (Article 17(1)) instead of the importer (Article 3(1)(f)(iii)) in that MS (see Figure 2 above). The obligation placed on a MS to allow a producer to appoint an AR applies only in cross border trading. Article 17(2) is a mandatory obligation that applies to those producers (Article 3(1)(f)(iv) 1<sup>st</sup> alternative) selling EEE to end users by means of distance communication in a MS other than where they are established (see Figure 3 below).

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<sup>1</sup> Described in under preamble no. 8 of WEEE2

<sup>2</sup> Inter alia Directive 93/42/EEC (Medical Devices Directive)

<sup>3</sup> [Guideline for Authorised Representatives MEDDEV 2.5/10, January 2012](#)

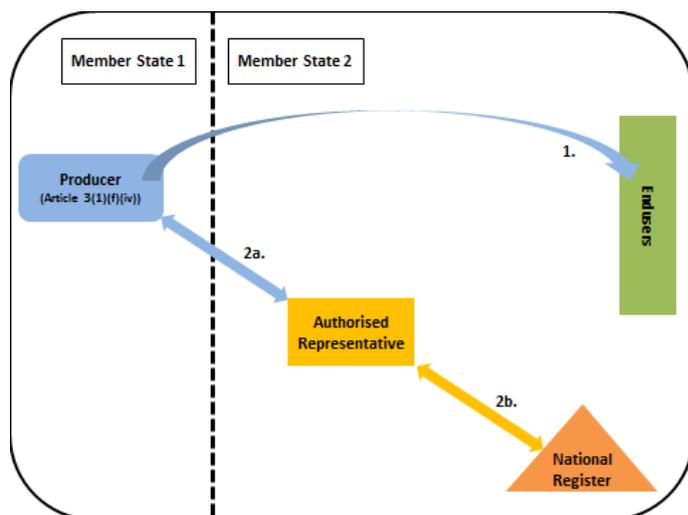


Figure 3

**Notes:** Producer in MS1 sells EEE directly to an end user (b2b or b2c) in MS2 by means of distance communication (1.). Unless the producer in MS1 is also established in MS2 (Article 16(1) sentence 4) he must, under Article 17(2), appoint an AR in MS2 (2a.). The AR in MS2 registers the producer and reports the quantities placed on the market in MS2 by the producer and fulfills all other producer responsibilities in MS2 (2b.).

**EWRN recommends to the MS that when drafting national legislation, the obligation to appoint an AR is also imposed on producers from third countries (outside the EU, Article 3(f)(1)(iv) 2<sup>nd</sup> alternative) selling EEE to end users in MS. This would ensure a level playing field for distance sellers, within and outside the EU and could also assist MS in identifying free-riders.**

### 5.3 Authorised Representative – the national representative of the producer

The AR is the national representative of the producer, established in another MS, when dealing with the national authorities in the MS where the AR is established.

An AR, once appointed by the producer and accepted by the national register, represents the producer in matters relating to, inter alia, registration, reporting and enforcement. The AR is responsible for, inter alia, the producer's obligations as set out in Article 16(2) b) and c) to provide the information to the national registers as per Annex X Part A and B of WEEE2.

An "exporter" may appoint more than one AR in a MS, but the responsibilities resting on each must be clearly defined to the national register.

### 5.4 How to appoint an Authorised Representative?

Appointment of an AR shall be by written mandate (Article 17(3)). Prior to registration the written mandate outlining the appointment of the AR must be submitted to the national register where the registration application is filed. An example of such a written mandate can be found in Annex 1 (page 9).

### 5.5 Duties and responsibilities of an appointed Authorised Representative

By accepting the appointment and signing the mandate the AR accepts that the AR is responsible for acting in name and on behalf of the producer (exporter) in all matters pertaining to, inter alia,

- Fulfilling of all national producer obligations
- Communication with the national register
- Provision of all relevant producer/AR information upon request to the national register
- Informing the producer about all relevant national obligations and information
- Responsibility for payment of fees, financial guarantee etc.
- Accepting prosecutions in the event of non-compliance.

***EWRN recommends that national legislation ensures that the AR is legally responsible and liable for fulfilling the obligations of the producer he represents (Article 17).***

### 5.6 What happens if an Authorised Representative mandate is terminated?

Looking at Figure 1, the general rule is that the importer in MS2 is the one who has legal obligations under WEEE2. Looking at Figure 2, the appointment of an AR in MS2 by the exporter in MS1 transfers the producer's obligations under WEEE2 from the importer in MS2 to the exporter in MS1 by exception to the general rule. Therefore, if an AR mandate is terminated producer responsibility must follow the general rule and fall back to the importer in MS2.

In the event that an AR's mandate is terminated the relevant national register must be informed immediately by both parties.

If a new AR has not been appointed simultaneously with the notification of the national register of the termination of the previous mandate the respective registration (Figure 2) shall be cancelled immediately. If no new AR has been appointed the exporter must also inform the importer immediately that he now has producer responsibility under WEEE2 and cannot legally place EEE on the market before fulfillment of his WEEE2 obligations.

The responsibilities which occurred during the mandate period remains with the AR until all liabilities are discharged (see Figure 4 below).

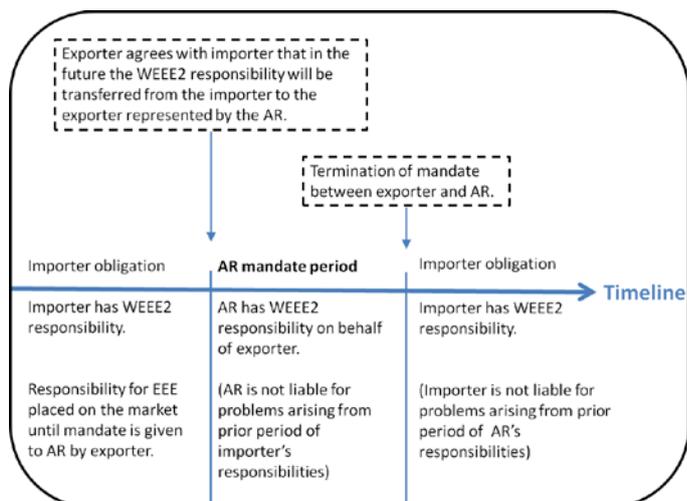


Figure 4

**Notes:** When responsibility moves between legal entities over the time it can be difficult to identify who has responsibility for non-compliance under WEEE2. It is suggested to keep the responsibility connected to the time of placing on the market of the EEE.

**EWRN recommends that MS, when drafting national WEEE2 legislation place an obligation on their producers, who place EEE on other MS markets, to comply with the WEEE2 regulations in those MS.**

### 5.7 Conflicts of interest

EWRN recommends that MS should take into consideration possible conflicts of interest due to different operational models in national WEEE system. For instance it would not be appropriate for national registers to be appointed acting as an AR.

## ANNEX 1 - Sample of a Written Mandate

A Ltd

New Street

Newtown

MS1

Hereby appoints

Mr. B/BLtd

Old Street

Oldtown

MS2

as its authorised representative in MS2 as per the EU Directive 2012/19/EU.

This mandate is for the following categories: \_\_\_\_\_

Mr. B/BLtd undertakes as the authorised representative of A Ltd in MS2 to represent A Ltd in all aspects of the above Directive as transposed by the national WEEE Regulations in MS2.

This mandate, signed by both parties, commences on the date of signature if not stated otherwise and will cease once either party informs the national register of MS2 that it has been terminated.

Signature Producer

Signature AR

Date \_\_\_\_\_

***[See national registers for individual templates]***