

A positive influence

Top tips for producer responsibility compliance in the EEA



Product Responsibility aims to make producers responsible for the end of life impacts of the products they place on the EEA market. This is an ever expanding concept which continues to present challenges for businesses. Our top tips are designed to help you focus on some key legal compliance areas whether you are manufacturing in or importing into the EEA, or supplying products to EEA-based customers.

Don't forget to consider the legal position in each individual member states where you do business.

This legislation is based on EU directives, so there is discretion as to how individual member states implement it.

We are seeing prosecutions now for breach of the Waste Electrical and Electronic Equipment (WEEE) Directive, batteries and packaging legislation in addition to potential claims from customers.

WEEE

1.

**Do you supply electrical or electronic equipment (EEE)?
Have you assessed whether you have any obligations under the WEEE Directive?**



Although the original WEEE Directive dates back to 2003, we still regularly come across businesses that are unaware of its implications. Interpretations regarding the scope of which products are caught by the WEEE Directive have changed significantly since the it was first introduced and then recast in 2012. Before long, all electrical and electronic equipment will be within scope unless it can benefit from one of the specific exemptions. The official date is 15 August 2018 but specific dates can vary in different jurisdictions. For example, it's 1 January 2019 in the UK and 1 January 2017 in France.

2.

Do you supply EEE products which are used by both consumers and businesses (so called dual use products)? Are you aware that dual use products must be reported as domestic EEE?



Dual use products are now deemed to be domestic EEE. However, approaches do vary across the EEA. For example, in the UK from 1 January 2015, dual use equipment is treated as domestic equipment unless you can show, based on the nature and design of the product, that it is not intended for use in the home and is therefore unlikely to appear in the domestic waste stream. In France and Germany, some EEE such as mobiles and laptops, can qualify as domestic EEE because they were put on the market for consumers even if they are used for professional purposes.

3.

Do you supply printer cartridges?



Following updated EU guidance, printer cartridges will come within the scope of the WEEE Directive. For example, in the UK producers of printer cartridges must register as producers for the 2016 compliance period. The financing obligations in respect of that equipment will start in respect of the 2017 compliance period. In France, this obligation has been applicable since 20 August 2014.

ROHS

4.

Are you aware that the scope of the ROHS Directive is increasing?



Originally medical devices and monitoring and control instruments were totally out of scope. Medical devices and monitoring and control equipment were brought into scope in 2014. In vitro diagnostic devices will be in scope from 22 July 2016 and industrial monitoring and control equipment from 22 July 2017.

With effect from 22 July 2019 all EEE will be brought in scope unless it benefits from one of the specific exemptions.

5.

New substance restrictions have been added



In March 2015 the EU added restrictions on four new substances – bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP). EEE will need to comply with these new restrictions from 22 July 2019, except in the case of medical devices and monitoring and control instruments, which will not have to comply until 22 July 2021. Phthalates can be found in a variety of products including insulation for cables, PVC sheets, sealants and adhesives.

6.**Do you know when non-compliant product can no longer be sold?**

Any products which were out of the scope of the original ROHS Directive but which have come into scope subsequently can continue to be sold until 22 July 2019. At present after this date no non-compliant stock can be sold, although this may be about to change.

7.**Do you distribute electrical or electronic products?**

Are you aware of the obligations on distributors? What processes do you have in place to demonstrate compliance? What due diligence are you doing on those higher up in your supply chain?

Batteries

8.**Are you aware that as the importer of a product containing a battery you can incur producer responsibility obligations?**

If you import products containing batteries into an EU member state (or a member of the EEA) you will be treated as the producer of those batteries in the same way as if you had manufactured or imported them into that state. This may mean you have to join a compliance scheme and pay towards the end of life costs of battery recycling.

Compliance with your obligations under the WEEE Directive does not exempt you from complying with the separate obligations under the Batteries Directive if your product contains batteries.

There are obligations to ensure the batteries can be easily removed and in some countries there are additional obligation. For example, in France and Germany every EEE that contains a battery must come with a set of instructions on how the final user can remove it.

9.**The UK government has clarified the definition of a portable battery**

With effect from 1 January 2016, only batteries weighing 4kg or less will be capable of being classed as portable batteries.

Packaging waste

10.**Don't forget the Packaging Waste Regime**

This legislation has been in force since the 1990s but we regularly come across businesses that are unaware of its significance. You may have assessed the impact of this legislation several years ago and not considered it since. If the amount of packaging you handle has increased you may be caught by this legislation - have you considered the impact of acquisitions on your compliance?

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