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WEEE 2 regulations and legislation on waste batteries and accumulators: obligations imposed on Producers who introduce EEE, Batteries and accumulators in countries other than those in which they are established.

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The WEEE 2 regulations (Directive 2012/19/EU; Legislative Decree (49/2014) take specifically into account the case of Producers based abroad who introduce EEE into the Italian market. The aim pursued is that of implementing also in this case the extended liability of the Producer, regardless of whether it is based in Italy or abroad. In Italy, in particular, we have a peculiar legislation, pre-existent to the implementation of the WEEE 2 Directive, which in addition to setting out specific obligations for Producers established in another EU Member State, extends to Producers established in a third Country (outside the EU) the possibility to be responsible for EEE sold to a trade intermediary established on the Italian territory.

Also in the case of waste batteries and accumulators there are regulations (D. Lgs. 188/2008; Directive 2013/56/EU) that govern the obligations for Producers established in another Member State who place batteries and accumulators (loose or incorporated in EEE) on the Italian market.

Let us examine what exactly this means.

WEEE 2 regulations: obligations for Producers who introduce EEE on markets other than those in which they are established

We can distinguish 5 cases, subdivided both according to customers type (trade intermediaries or end private/professional users) and according to the place where the Producer is established (in a Member State, in a foreign State, in Italy), as follows:

1. Producer based in another Member State who sells to end-users in Italy: must appoint



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an authorised representative in Italy

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2. Producer based in another Member State who sells to commercial intermediaries based in Italy: **can** appoint an authorised representative in Italy
3. Producer based in a Third Country who sells to end-users in Italy: **must** appoint an authorised representative in Italy
4. Producer based in a Third Country who sells to trade intermediaries based in Italy: **can** appoint an authorised representative in Italy
5. Producer based in Italy who sells to end-users in another Member State: **must** appoint an authorised representative in Italy

Let us now examine these 5 cases in more detail.

1 . Producer based in another Member State who sells to end-users in Italy

The Producer based in another **Member State** who supplies EEE to end-users in Italy must comply with all those requirements imposed on WEEE Producers established in Italy through an “authorised WEEE representative” resident in the Italian territory who will fulfil all obligations regarding registration in the National WEEE Register, coordinate relations with the collective scheme chosen for complying with current regulations, as well as be directly responsible for organizing the collection of WEEE throughout the national territory (Art. 22.1 and Art. 29.5 D. Lgs. 49/2014). It must be pointed out that the WEEE representative is a mere special attorney since he is neither a legal or a tax representative in Italy. In fact, the Ministerial Decree 185 of 25 Sep 2007, on the establishment and operating procedures of the WEEE Register (expressly recalled also in Art. 29.5 of D. Lgs. 49/2014), defines this representation mechanism under Art. 3.1 as follows: “*Registration to the WEEE Register must be made by the Producer at the Chamber of Commerce in whose jurisdiction the registered office of the company is located. In the event that the Producer is not established in the Italian territory, it shall register through a representative in Italy responsible for fulfilling the obligations of that Producer.... In such case the registration must be made at the Chamber of Commerce in whose jurisdiction the*

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registered office of the appointed representative is located ". My law firm, for example, currently acts in a representative capacity –through a WEEE collective scheme at contracted rates– for many Producers established abroad, without this implying any other legal, tax or corporate representation.

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2 . Producer based in another Member State who sells to trade intermediaries based in Italy

The possibility to appoint an authorised representative responsible for fulfilling all WEEE obligations of a Producer established in a Member State who sells EEE to trade intermediaries established in another Member State, is expressly provided for by Art. 30.1 of D. Lgs. 49/2014, which faithfully reproduces the corresponding Art. 17.1 of the WEEE 2 Directive.

3 . Producer based in a Third Country who sells to end-users in Italy

In this regard, I would like to remind that under the WEEE 2 regulations, "**Producer**" is who: (1) manufactures and sells equipment in Italy under its own brand name (**e.g.: Electrolux marketing "Electrolux vacuum cleaners "**); (2) resells in Italy under its own brand name equipment produced by other suppliers (**e.g.: Hypermarket selling under its own brand name electrical appliances manufactured on its behalf in China**); (3) imports or first places on the national territory equipment (marked with another's brand name) and sells it, also by means of distance selling (**e.g.: Independent Italian importer of Philips light bulbs in Italy**).

To these three categories, the WEEE 2 regulations, and hence the D. Lgs. 49/2014 implementing them, add a fourth one: in fact, is defined "**Producer** " the distance seller based in another State, namely the (natural or legal) person who: "**is established in another Member State of the EU or in a third Country and sells EEE on the national territory by means of distance communication directly to private households or to users other than private households**" (Art. 3(1)(f)(iv) of Directive 2012/19/EU; Art. 4(1)(g)(4) of D. Lgs. 49/2014). Consequently, the Producer established in a third Country



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is, under the WEEE regulations, a Producer to all effects and purposes, even if we must verify according to the case which are the obligations imposed by law. In the case at issue, the aforesaid Art. 22 of D. Lgs. 49/2014 sets out that in the case of distance sales to end-users in Italy, Producers non established in the Italian territory must, through a WEEE representative, fulfil all related obligations; this without any distinction between Producers established in a Member State or in a third Country. This requirement is also further reiterated and clarified by the EU Commission WEEE 2 FQA at Q. 9.1¹. (<https://www.google.it/#q=faq+weee+2012%2F19>)

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4 . Producer based in a Third Country who sells to trade intermediaries based in Italy

Neither the WEEE 2 Directive nor the implementing Italian legislation compel Producers established outside the EU, who sell EEE to Italian trade intermediaries, to be responsible for fulfilling the WEEE obligations of said intermediaries; but neither do they prohibit it.

1 Q. 9.1. Can a manufacturer or seller who is not established in any Member State be considered as a producer of EEE?

"Yes. According to Article 3(1)(f)(iv) of the new WEEE Directive, in cases where the manufacturer or other seller, established in a non-EU country, sells EEE directly to an end-user located in a Member State by means of distance communication, this seller is considered to be the producer of that EEE and must make provisions for compliance with the Directive (e.g. register, fulfil take-back obligations, report).

To illustrate this, consider the case of a company A established in a Member State (MS1) which sells EEE to one or more companies (e.g. companies X, Y) in another Member State (MS2). According to article 17(1), MS2 shall allow company A to appoint an authorised representative responsible for fulfilling the obligations of company A in MS2. This means that for the quantities that company A places on the market of MS2, the authorised representative is responsible for fulfilling the relevant obligations (e.g. registration, reporting to schemes, etc). It also means that the companies X, Y should not declare these quantities and they do not have any producer obligation concerning these quantities. If company A does not appoint an authorised representative in MS2, the companies X, Y (as producers in MS2 according to Article 3(1)(f)(iii)) are the responsible producers in that Member State. (...) ".



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In fact, as aforementioned, under the WEEE 2 regulations –albeit with reference to sales to end-users– the definition of Producer applies also to Producers established “....*in another Member State of the EU or in a third Country...*”, and in the body of the implementing Italian legislation there are no provisions which may be construed as prohibiting the Producer established outside the EU to be responsible through a WEEE representative for the obligations that will otherwise be imposed on its purchasers in Italy . Indeed, the aforesaid Ministerial Decree 185/2007 establishing the National WEEE Register, in regulating the registration procedures for Producers not established in Italy, makes no distinction between the Producer established in another Member State or in a third Country nor on the event that the sale may refer to trade intermediaries or end-users in Italy.

It must therefore be concluded that, at least according to the Italian legislation, Producers established outside the EU who sell EEE to Italian trade intermediaries **can** elect to be responsible instead of said intermediaries for fulfilling, through a WEEE representative in Italy, the obligations set out by the WEEE regulations. This conclusion is in line with the guidelines of the EU Commission in this regard³.

² While it is true that **Art. 29.5** of D. Lgs 49/2014 provides that registration to the WEEE Register must be made –in accordance with Art. 3 of Ministerial Decree 185/2007– only by the Producer or its authorised representative pursuant to the successive **Art. 30**, as well as it is also true that this last provision refers only to the authorised representative of Producers established in another Member State, this cannot however lead to disregard the “broader” definition of Producer –referred also to the one established in a third Country– contained in Art. 4(1)(g)(4) and also in the corresponding provision of Directive 2012/19/EU, namely Art. 3(1)(f)(iv), in the light of which the implementing national law must necessarily be interpreted.

³ EU Commission WEEE 2 FQA

“9.1. *Do producers have the right to appoint an authorised representative, instead of being established in a Member State? (.....)*

With regard to producers as defined in Article 3(1)(f)(iv), article 17(2) of the Directive states that the Member State in which they are established shall ensure that these producers appoint an authorised representative in the Member State(s) to which they sell EEE by means of distance communication while



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5 . Producer based in Italy who sells to end-users in another Member State

The Producer based in Italy “*who sells EEE in another Member State in which it is not established, must appoint an authorised representative in that Member State as the person responsible for fulfilling the obligations of that Producer, pursuant to the legislation of the Country in which the sale is made*” (Art. 30.2 of D. Lgs. 49/2014 and also Art. 17.2 of the WEEE 2 Directive). Said provision refers to sales to end-users (private or professional) and not to those to trade intermediaries, as specified by Art. 22.1 of D. Lgs. 49/2014 (Obligations relating to distance selling) and by the WEEE 2 Directive FQA of the EU Commission (Q. 1.32, para 1). It is worth reminding that, even if this obligation refers to WEEE produced outside Italy, failure to comply with this provision will result in a fine being imposed in Italy ranging from EUR 200 to EUR 1000 for each EEE placed on the foreign market (Art. 38.5).

Regulations on waste Batteries and Accumulators: obligations on Producers who introduce EEE in countries other than those in which they are established

It should first of all be noted that in accordance with Directive 2013/56/EU, aimed at clarifying the previous regulations, “*Producers of batteries and accumulators shall only need to register once in the Member State where they place batteries and accumulators for the first time on a professional basis....* ” (Directive 2013/56/EU, Annex IV).

Given the above, the Italian legislation (D. Lgs. 188/2008, Annex III) states that the

not being established in that Member State(s), in order to have somebody ensuring compliance with their obligations as producers”.

*“Distance sellers in the sense of Article 3(1)(f)(iv) that are established **in a third country** have to be registered in the Member State to which they sell EEE. Where such producers are not registered directly in the Member State that they sell to, they have to be registered through an authorised representative”.*



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Producer established in another Member State or in a third Country (without any distinction in this respect) “...., shall register in the National WEEE Register through a representative in Italy responsible for fulfilling the obligations” set out by the legislation in question, which implemented in Italy the Directive 2006/66/EC on waste batteries and accumulators.

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