ELECTRICAL AND ELECTRONIC EQUIPMENT SOLD IN THE EUROPEAN UNION MUST COMPLY WITH NEW WEEE 2 REQUIREMENTS

The new Waste Electrical and Electronic Equipment Directive 2012/12/EU (WEEE 2) went into effect on August 13, 2012, and will affect U.S. companies that sell electrical and electronic equipment (EEE) in the European Union (EU). Each EU Member State is in the process of transposing WEEE 2 into national law, which must be accomplished by February 14, 2014.1 WEEE 2 includes the following:

- A broader scope of covered electrical and electronic equipment
- Specific exemptions
- Clarification and expansion of “producer” definition
- Modified registration and reporting requirements
- Increased collection and recycling requirements

Expanded Scope of Covered EEE

The original Waste Electrical and Electronic Equipment Directive 2002/96/EC (WEEE Directive),2 currently in effect until it is repealed on February 15, 2014, covers 10 specifically identified categories of electrical and electronic equipment.3 In addition, as of August 13, 2012, photovoltaic panels are considered covered EEE. However, as of August 15, 2018, WEEE 2 will apply to all EEE (this is referred to as an “open scope”), which will be divided into six newly defined categories for the purpose of determining recovery and recycling targets. The six new categories are listed below:

- Temperature-exchange equipment4
- Screens, monitors, and equipment containing screens that have a surface area greater than 100 square centimeters5
- Lamps6
- Large equipment (equipment with any external dimension greater than 50 centimeters) including, but not limited to, household appliances; IT and telecommunications equipment; consumer equipment; luminaries; equipment reproducing sound or images; musical equipment; electrical and electronic tools; toys and leisure and sports equipment; medical devices; monitoring and control instruments; automatic dispensers; and equipment for the generation of electric currents. This category does not include equipment included in the first three categories.7
- Small equipment (equipment with no external dimension greater than 50 centimeters) including, but not limited to, household appliances; consumer equipment; luminaries; equipment reproducing sound or images; musical equipment; electrical and electronic tools; toys and leisure and sports equipment; medical devices; monitoring and control instruments; automatic dispensers; and equipment for the generation of electric currents. This category does not include equipment included in the first three categories.8
- Specific exemptions
- Clarification and expansion of “producer” definition
- Modified registration and reporting requirements
- Increased collection and recycling requirements

1 The original European Union Directive on Waste Electrical and Electronic Equipment 2002/96/EC took effect in 2005 and was aimed at increasing the collection, recycling, and reuse of waste electrical and electronic equipment and encouraging the design and production of electrical and electronic equipment that could be dismantled and recovered more easily. More information can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0038:0071:EN:PDF.
2 WEEE 2 requires Member States to take all measures necessary to ensure that their national provisions are implemented and provide penalties for non-compliance that are effective, proportionate, and dissuasive. WEEE 2, Articles 22 and 24.
3 “Waste electrical and electronic equipment” includes electrical and electronic equipment that is considered waste within the meaning of Article 3(1) of Directive 2008/98/EC, including all components, sub-assemblies, and consumables that are part of the product at the time of discarding. WEEE 2, Article 3(e).
4 The WEEE Directive currently covers the following 10 categories of EEE: 1) large household appliances; 2) small household appliances; 3) IT and telecommunications equipment; 4) consumer equipment and photovoltaic panels; 5) lighting equipment; 6) electrical and electronic tools, with the exception of large-scale stationary industrial tools; 7) toys and leisure and sports equipment; 8) medical devices, with the exception of all implanted and infected products; 9) monitoring and control instruments; and 10) automatic dispensers.
5 WEEE 2, Annex IV, includes a non-exhaustive list of EEE that falls within the new categories. Temperature-exchange equipment includes refrigerators, freezers, equipment that automatically delivers cold products, air conditioning equipment, dehumidifying equipment, heat pumps, radiators containing oil, and other temperature-exchange equipment using fluids other than water for the temperature exchange.
6 The screens and monitor category includes screens, televisions, LCD photo frames, monitors, laptops, and notebooks containing screens with a surface area greater than 100 square centimeters. WEEE 2, Annex IV.
7 The lamps category includes straight fluorescent lamps, compact fluorescent lamps, standard fluorescent lamps, high-intensity discharge lamps (including pressure sodium lamps and metal halide lamps), low-pressure sodium lamps, and LED lights. WEEE 2, Annex IV.
8 The large equipment category includes washing machines, clothes dryers, dishwashing machines, cookers, electric stoves, electric hot plates, luminaries, equipment reproducing sound or images, musical equipment (excluding pipe organs installed in churches), appliances for knitting and weaving, large computer mainframes, large printing machines, copying equipment, large coin-slot machines, large medical devices, large monitoring and control instruments, large appliances that automatically deliver products and/or money, and photovoltaic panels. WEEE 2, Annex IV.

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Electrical and Electronic Equipment Sold in . . .

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The small equipment category includes vacuum cleaners; carpet sweepers; appliances for sewing; luminaries; microwaves; ventilation equipment; irons; toasters; electric knives; electric kettles; clocks and watches; electric shavers; scales; appliances for hair and body care; calculators; radio sets; video cameras; video recorders; hi-fi equipment; musical instruments; equipment reproducing sound or images; electrical and electronic toys; sports equipment; computers for biking, diving, running, rowing, etc.; smoke detectors; heating regulators; thermostats; small electrical and electronic tools; small medical devices; small monitoring and control instruments; small appliances that automatically deliver products; and small equipment with integrated photovoltaic panels. WEEE 2, Annex IV.

The small IT and telecommunications equipment category includes mobile phones, GPS devices, pocket calculators, routers, personal computers, printers, and telephones. WEEE 2, Annex IV.

WEEE 2, Article 2(3)(b). This exemption is more narrow than it was under the original WEEE Directive (2002/96/EC, Article 2(1)) since the exemption solely applies to EEE that can fulfill its function only if it is part of the EEE that is excluded or does not fall within the scope of WEEE 2.

WEEE 2, Article 2(3)(c). Filament bulbs were excluded specifically from the original WEEE Directive (2002/96/EC), Annex 1B, 5.

Large-scale fixed installations are defined as a large-sized combination of several types of apparatus and, where applicable, other devices, which 1) are assembled, installed, and de-installed by professionals at a given place, and used and maintained by professionals in an industrial manufacturing facility or research and development facility. WEEE 2, Article 3(1)(b).

Large-scale stationary industrial tools are defined as a large-sized combination of a machine, equipment, and/or components, functioning together for a specific application, permanently installed and de-installed by professionals at a given place, used and maintained by professionals in an industrial manufacturing facility or research and development facility. WEEE 2, Article 3(1)(b).

Large-scale fixed installations are defined as a large-sized combination of several types of apparatus and, where applicable, other devices, which 1) are assembled, installed, and de-installed by professionals, 2) are intended to be used permanently as part of a building or a structure at a pre-defined and dedicated location; and 3) can be replaced only by the same specifically designed equipment. WEEE 2, Article 3(1)(c). This definition is somewhat narrower than the definition given in the European Union directive on the restriction of the use of certain hazardous substances in EEE (2011/65/EU), also known as ROHS 2 or ROHS Recast (ROHS 2). Oil platforms, luggage transport systems, and elevators are cited as examples of large-scale fixed installations, but equipment such as lighting equipment or photovoltaic panels, which are not specifically designed and installed as part of these large-scale installations and can fulfill their function even if they are not part of these installations, are included within the scope of WEEE 2. WEEE 2, (9).

Producers have a number of obligations under WEEE 2, including (but not limited to) marking and labeling EEE; financing the costs for collection, treatment, recovery, and disposal of WEEE; providing information to facilitate the re-use and treatment of WEEE; maintaining records for the purpose of calculating the recovery of WEEE; and registering and reporting information.

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information to competent authorities. WEEE 2 redefines a “producer” by referencing the legal establishment of the producer. A “producer” is any natural person or legal entity that, irrespective of the selling technique (including distance communication):

- is established in a Member State and within that Member State 1) manufactures EEE under his or her own name or trademark or 2) has EEE manufactured and markets it under his or her name or trademark;
- is established in a Member State and resells in that Member State under his or her own name or trademark equipment produced by other suppliers;20
- is established in a Member State and places on that market in that Member State on a professional basis EEE from a third country or from another Member State; or
- sells EEE by means of distance communication directly to private households or to users other than private households in a Member State and is established in another Member State or in a third country.21

Thus, a United States company that sells EEE directly to consumers or businesses in a Member State by means of distance communication is a “producer” under WEEE 2.

WEEE 2 requires Member States to ensure that a producer as provided above that is established in another Member State (but not the Member State where the product is placed on the market) is allowed to appoint an authorized representative to fulfill its producer obligations in the Member State where the product is placed on the market.22 Member States also are required to ensure that a producer that is established on its territory but that sells directly to consumers or businesses (by means of distance communication) in a Member State where the producer is not established can fulfill its producer obligations by appointing an authorized representative in the Member State where the product is placed on the market.23

**National Online Registries Will Facilitate Producer Registration**

WEEE 2 requires Member States to establish online registries for producers and their authorized representatives (including producers selling by means of distance communication) for the purpose of facilitating compliance with the WEEE 2 producer obligations and Member States’ compliance with regulations regarding the monitoring and collection of information.24

**WEEE 2 Establishes Higher Collection and Recovery Targets**

The Member States’ WEEE collection rates currently are based on four kilograms of WEEE per inhabitant per year from private households. These collection rates will continue to apply through 2015, but beginning in 2016 the collection rates will be based on the total weight of all EEE placed on the market in each Member State.25 From 2016 through 2018, Member States will establish minimum annual collection rates, which shall be at least 45 percent of the average weight of all EEE put on the market during the three preceding years in that Member State.26 Beginning in 2019, the collection rate increases to 6 percent of the average weight of all EEE put on the market during the three preceding years in that Member State, or alternatively 85 percent of WEEE generated on the territory of that Member State in the relevant calendar year.

In addition to increased collection rates, WEEE 2 sets increased recovery rates. From August 15, 2015, until August 14, 2018, Member States are required to ensure that producers meet the 5 percent increased recovery rates for each of the 10 categories of EEE set forth in Annex 1.27 Beginning August 15, 2018, when the redefined and broader categories of EEE take effect, the recovery rates will apply to the six categories of EEE listed earlier in this alert.28 Most of the EEE target recovery rates will remain the same, but producers may discover that some products will have higher or lower target recovery rates than before.

WEEE 2 also includes more stringent requirements for exporters of used EEE to address concerns that non-functional EEE is being exported illegally to developing countries. WEEE 2 requires exporters of used EEE to demonstrate that the used EEE is fully functional and destined for reuse, or is defective and being sent for repair under warranty. Member States are required to establish testing procedures and record-keeping requirements so that exporters can demonstrate that the EEE is used EEE and not WEEE.29

If you have any questions regarding this new directive, please feel free to contact Kimberly McMorrow (kmcmorrow@wsgr.com or (650) 565-3520) in Wilson Sonsini Goodrich & Rosati’s real estate and environmental law practice.

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20 A reseller will not be regarded as a “producer” if the brand of the producer appears on the equipment as provided above. WEEE 2, Article 3(1)(f)(ii).
21 WEEE 2, Article 3(1)(f)(iv).
22 WEEE 2, Article 17(1).
23 WEEE 2, Article 17(2).
24 WEEE 2, Article 16.
25 It is presumed that the new procedures for determining Member States’ collection rates will result in increased WEEE collection.
26 Bulgaria, the Czech Republic, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia, and Slovakia are allowed to set lower collection rates until 2021 due to their lack of necessary infrastructure and their low levels of EEE consumption. WEEE 2, Article 7(3).
27 Annex V to WEEE 2 sets forth the minimum recovery targets referred to in Article 11 of WEEE 2. See footnote No. 4 for the list of the 10 categories of EEE.
28 For more information, please see WEEE 2, Annex III and IV, and the previous discussion under “Expanded Scope of Covered EEE.”
29 To learn more, see WEEE 2, Annex VI.