***How has the WEEE 2 Directive been implemented in Italy? Italian peculiarities, problems and issues***

***Avv. Maurizio Iorio ©***

Through the Legislative Decree No. 49 of 14 Mar 2014, Italy before any other EU Member State except Nederland and the UK, implemented the Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE 2 Directive). In this memo in simple and plain terms some of the main characteristics of this important legislative development shall be examined , with particular attention to Italian peculiarities and to critical issues affecting Producers.

The Italian law implementing the recast WEEE Directive, whose general framework even though quite balanced is by no means exempt from criticism and critical issues, introduces in our system with some national peculiarities – especially with regard to financing the collection of WEEE from the consumer’s home – the new European legislation which inevitably affects, in the first place, the pockets of Producers, but also those of distributors and ultimately those of consumers.

**WHEN DID THE ITALIAN LAW IMPLEMENTing the WEEE 2 directive comE INTO FORCE?**

The Legislative Decree No. 49 of 14 Mar 2014, implementing the recast WEEE Directive 2012/19/EU (WEEE 2), was published in the Official Gazette on 28 Mar 2014 and entered into force on 12 Apr 2014.

**WHAT IS WEEE?**

WEEE is Electrical and Electronic Equipment (EEE) which has reached end-of-life (waste), namely any “***equipment which is dependent on electric currents or elec­tromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1500 volts for direct current*** ”.

**Which PRODUCTS fall under WEEE?**

Here is where one of the most important novelties, the “open scope”, comes into play.

In fact, we have two phases: **up to 14 Ago 2018** there shall be no radical changes from the previous WEEE regulations since the products will remain more or less the same as the traditional ones listed in Annexes I and II of the Legislative Decree No. 49 of 2014, save for the immediate inclusion as EEE of photovoltaic panels and a few other products and save for the exclusions already provided for by the previous WEEE Directive (such as, for example, large-scale stationary industrial tools, large-scale fixed installations and “dedicated” components thereof).

From **8 Ago 2018 onwards**, the scope shall extend to all electrical and electronic equipment in accordance, in fact, with the “*open scope concept* ”, except for the exclusion of some products, among which I mention: weapons, munitions and other war material, medical equipment and devices, research and development equipment, forklift trucks and other professional vehicles, electric means of transport other than electric bicycles, and others.

**Household WEEE: WHO COLLECTs it FROM THE CONSUMERs’ home AND WHO TAKES CARE OF IT from THE collection facilities ONWARDS?**

It should be firstly pointed out that with “household WEEE” it is meant that coming from “private households”, while professional WEEE, or “Business to Business (B2B) WEEE”, is all the other, except for any WEEE which, because of its nature and quantity, is similar to that from private households (e.g., disused TV sets from a hotel or a hospital). The WEEE 2 legislation innovatively establishes that when a device or equipment can be used both in a private household and by a business (as in the case of certain mid-range printers), it shall be classified as household EEE.

As under the previous WEEE regulation, municipalities and in part the Distributors ensure the collection of WEEE from the consumers’ homes, while Producers are responsible (individually or collectively through membership in collective schemes ( in the case of Italy consortia ) for picking WEEE from collection facilities and for its proper treatment. Please note that one thing are the operations involved and a very different thing the costs that Italian law now allocates, at least in part, to the Producers - also as regards to its collection from the consumers’ homes - as we shall see further on.

**WHO finances THE COLLECTION of WEEE from the consumers’ homes?**

As mentioned above, accountable for the collection from the consumers’ homes to collection facilities are the municipalities and, in certain specified cases, the Distributors.

The Decree No. 49 of 2014, with an all-Italian peculiarity, does however provides that Producers shall pay performance bonuses “*upon the occurrence of good operating conditions* ” to: (a) municipal collection facilities, and (b) Distributors.

This based on as many **Programme Agreements** (lasting 3 years) to be concluded, in the first case, between Producers and ANCI (National Association of Italian Municipalities) and, in the second case, between Producers, Distributors and ANCI (  Associazione Nazionale dei Comuni Italiani : national confederation of local authorities ).

In the event that one and/or the other type of agreement is not finalised within the specified timeframe, it is established that the Ministry for the Environment and Protection of the Territory (MATT), after having urged the parties to reach an agreement “.... *shall directly take care of it in cooperation with the Minister of Economic Development* ... ”.

**PROFESSIONAL WEEE: WHO AND HOW IS IT MANAGED?**

There are two obligations placed on Producers, the first possible and the second certain: (1) the Producer TOM sells to the tradesman DICK an electric cutter meant to replace the old equipment that has fulfilled the same function and that the craftsman now wants to dismiss: if this equipment had been purchased before 13 Ago 2005, TOM shall (just) in that case be required to have it collected and treated at his own expense; (2) TOM shall instead be accountable for collecting and treating at his own expense the electric cutter sold by him when this has reached end-of-life (waste). The Producer TOM (in the same way as with the previous WEEE regulations) can join a collective scheme system or decide to individually meet the obligations that we have just examined; PLEASE NOTE, though, that there is now a novelty: in fact, in this latter case it is required that the Producer must previously submit for approval to the Ministry for the Environment an application with the necessary documentation to demonstrate the efficiency and adequacy of the individual system that he intends to adopt .

**AND photovoltaic** **PANELS, HOW ARE THEY CLASSIFIED AS?**

Here too we have an all-Italian peculiarity. According to the new Italian law, end-of-life photovoltaic panels (PV) are classified as household WEEE if they come from plants with a nominal power of less than 10 kW (and fall within the WEEE-group 4 of the 5 laid out by the Italian legislation). According to an interpretative document of the European Commission (the Commission's FAQ on the recast WEEE Directive) the PVs, since dual-use equipment, always and only generate household WEEE, except for WEEE arising from EEE which is inherently and distinctly identifiable as intended for professional use only.

**COLLECTIVE SCHEME SYSTEMS**

Producers who do not fulfil their WEEE obligations individually must join a collective scheme subjected to the supervision of the MATT.

Also here the Legislative Decree No. 49 of 2014 implements with entirely Italian peculiarity the Directive 2012/19/EU; in fact, it establishes, among other things ( art. 10 ) , that collective schemes must: **a) necessarily have the form of a non-profit Consortium; b) conform their statute to a standard statute to be adopted by the MATT together with the MISE and obtain ministerial approval of their statutes; c) possess the ISO 9001, ISO 14001 and EMAS certifications or equivalent management system.**

-In addition: the collective schemes must “... *be open to the participation of all operators* ... *and ... ensure transparency, non-discrimination, non-distortion of competition, free movement ... highest possible return* ”; and “....*any distributor, collector, transporter and recycler can join the collective schemes, subject to prior agreement with WEEE producers ”.*

-Finally: existing collective schemes must conform their statute within 90 days from the approval of the standard statute, while new collective schemes must send a copy of their statute, conformant to the standard statute, within 15 days from its adoption to the MATT for approval.

The provision which foresees standard statutes for private bodies/entities such as the consortia – of which, again, there is no mention in the WEEE 2 Directive – raises a few reservations from a legal standpoint.[[1]](#footnote-1)

**ARE THERE ANY COLLECTION TARGETS?**

The targets are set as follows:

1 - until 31 Dec 2015 no new targets were being set;

2 - by 1 Jan 2016 the first (minimum) annual collection target was to be reached, which was equal to 45% of the average weight of EEE put on the market in the three preceding years;

3 - by 1 Jan 2019 the second annual collection target should be gradually reached, which is equal to 65% of the average weight of EEE put on the market in the three preceding years or, alternatively, 85% of WEEE generated annually on the territory.

**DISTANCE SELLING IN ITALY BY A PRODUCER ESTABLISHED IN A THIRD country**

I it must first be pointed out that under the WEEE legislation, “***Producer*** ” is who: (1) manufactures and sells EEE in Italy under his own name or trademark (***e.g.: Electrolux marketing*** *“****Electrolux vacuum cleaners*** ”); (2) resells in Italy under his own name or trademark equipment produced by other suppliers (***e.g.: Hypermarket selling under its own brand appliances made ​​on its behalf by a manufacture in China***); (3) imports or first places on the national territory equipment and markets it, also through distance selling (namely the importer) (***e.g.: Independent Italian importer of Philips light bulbs in Italy***).

-To these three categories, the WEEE 2 Directive, and thus the Legislative Decree No. 49 of 2014 implementing it, adds a fourth one: in fact, it is defined a “***Producer*** ” the distance seller based in another state, specifically any (natural or legal) person who: “***is established in a Member State 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*** ”.

-As to the obligations to be met by “foreign” Producers, the new legislation states that: (a) **Producers established in another Member State or third country who sell EEE to resellers in Italy:** **CAN** register with the National WEEE register through a **WEEE representative in Italy**, thus freeing their clients from all WEEE-related regulatory obligations in force in Italy;

(b) **Producers established in another Member State or third country who distance sell EEE to end-users in Italy: MUST** register with the National WEEE register through a WEEE representative in Italy.

**WHAT ARE THE distributors obligations WITH regard TO the collection of WEEE from the consumer’s home?**

The distributors, in addition to ensure a “*one-for-one*” take-back at the time of selling a new EEE as provided by current regulations, are now for the first time also required a “*one-for-zero*” take-back, i.e. regardless of whether or not a new product has been sold: this latter obligation applies to retail stores with at least 400 square metres of electrical and electronic products sales area and refers only to WEEE smaller than 25 cm and, in any case, “....*unless an assessment shows that alternative existing collection schemes are likely to be at least as effective* …”.

**are there any new particular obligations for COLLECTION CENTRES operators?**

The Legislative Decree No. 49 of 2014 states that “*The collection centres will include specific areas allocated to the preliminary storage of household WEEE COLLECTed for preparation for reuse* ”.

**ARE ANY HARMONISED STANDARDS FORESEEN FOR THE TREATMENT OF WEEE?**

The WEEE 2 Directive foresees the development of harmonized standards at European level for the treatment of WEEE so as to reflect “*the latest state-of-the-art* ”, to be developed by the European standardisation organisations. Member States may develop additional national standards, of which they must inform the Commission.

Annex VII of the Italian law implementing the recast WEEE Directive reproduces the corresponding annex to the directive and regulates the selective treatment of WEEE: such regulations can only be amended by the Commission which, to this end, will assess the possibility of extending it to nanomaterials.

1. *ART. 10 ( Legislative Decree No. 49 /2014 )*

   *(*Collective scheme system*)*

   1. Producers who do not fulfil their obligations through an individual scheme must join a collective scheme. *Subject to prior agreement* with EEE producer, any distributor, collector, transporter and recycler can join the collective scheme.

   *2.* Collective scheme systems are organized in the form of a consortium pursuant to Article 2602 and following of the Civil Code as applicable, and except as provided by this legislative decree.

   *3. The consortiums referred to in paragraph 2 have independent legal status under private law, are non-profit-making and operate under the supervision of the Ministry for the Environment, Land and Sea and the Ministry of Economic Development, which within 6 months from the entry into force of this legislative decree shall approve a statute in a standard form.*

   *4.* Each collective scheme must ensure the collection of WEEE from municipal facilities all over the country as indicated by the Coordination Centre.

   *5. T*he existing and newly established consortiums must conform their activity to the guiding criteria of the management systems referred to in Article 237 of the legislative decree No. 152 of 3 Apr 2006, as well as conform their statute to the standard statute, in accordance with the procedures set forth in paragraph 6, 7 and 8 below.

   *6. The existing collective schemes must adapt their statute within 90 days from the approval of the standard statute and send a copy of it within 15 days to the Ministry for the Environment, Land and Sea for approval.*

   ***7.*** *The newly established collective schemes must send a copy of their statute within 15 days from its adoption to the Minister for the Environment, Land and Sea for approval.*

   *8.* The statute will be approved within 90 days from being sent, by decree of the Minister for *the Environment, Land and Sea* in cooperation with the Minister of Economic Development, save for any justified variation request which the consortium must fulfil within the next 60 days.The approval of the statute is an essential condition for joining the National Register.

   *9.* The collective schemes provide an annual report to the Ministry for *the Environment, Land and Sea* together with the prevention and management plan for the following calendar year, including a statement of the financial resources that will be used and a copy of the financial statement accompanied by a report on operations for the preceding calendar year with indicated the objectives reached.

   10. *The collective schemes are required to ensure their financial stability and any surplus operating funds shall not contribute to the formation of income and cannot be shared out among the consortium members .Collective systems shall also   provide evidence to possess the following certifications : ISO 9001 and 14001 , EMAS  or any other equivalent audited system of quality management  covering treatment processes and the company monitoring   .* [↑](#footnote-ref-1)