***EEE that is not WEEE***

**Which electrical and electronic equipment does not fall within the WEEE referred to in the WEEE 2 regulation? It is important for producers and distributors to identify which it is, even if this is not always easy, so as to avoid having to bear environmental costs not attributable to them and safeguard their competitiveness.**

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**In order to correctly identify the equipment under the WEEE 2 regulation, it is first necessary to clarify the meaning of the following definitions:**

**THE WEEE 2 REGULATION**

The Italian law implementing the WEEE 2 Directive, whose general framework is quite balanced but by no means exempt from criticism and critical issues, transposes in our system with some national peculiarities – especially as regards to financing the collection of WEEE from the consumer’s home – the new European legislationon the collection and management of WEEE, which inevitably affects, in the first place, the producers’ pockets, but also those of distributors and ultimately those of consumers.

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

**WHAT IS WEEE?**

WEEE is defined as Electrical and Electronic Equipment (EEE) that has reached end-of-life (waste), that is to say 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*** *”.*

**HOUSEHOLD WEEE AND PROFESSIONAL WEEE: WHAT ARE THE COSTS?**

- I would like first to remind that with **household WEEE** it is meant that coming from “private households”, while professional WEEE is all the other, except for any WEEE which, because of its nature and quantity (e.g., some discarded TV sets from a hotel or a hospital), is comparable to that from private households. The WEEE 2 regulation innovatively establishes that when a device or equipment (e.g., certain mid-range printers) is designed and intended to be used both in a private household and by a business, it shall be classified as household EEE.

As under the previous WEEE regulation, municipalities and partly the Distributors ensure the collection of WEEE from the consumer’s household, while Producers are responsible (individually or collectively through membership in consortia) for picking up WEEE from collection centres and its proper treatment.

- As to **professional WEEE**, there are two obligations placed on Producers, the first possible, while the second is certain: (1) the Producer TOM sells to the craftsman DICK an electric trimmer meant to replace the old equipment that has fulfilled the same function and that the craftsman now wants to dispose of: if this equipment had been purchased before 13 Aug 2005, just only in that case TOM is required to have it collected and treated at his own expense; (2) TOM shall instead always be accountable for collecting and treating at his own expense the waste resulting from the new electric trimmer sold by him when this will be dismissed. The Producer TOM (just as under the previous WEEE regulation) can join a collective scheme system or decide to individually meet the obligations that we have just examined; PLEASE NOTE that there is now a novelty: in fact, in the 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.

**WHICH PRODUCTS FALL UNDER WEEE?**

Given the costs faced by the Producer, it is thus essential to correctly identify the products that at the end of their life will become WEEE. As to the list of such products, here is where one of the most important novelties, the “open scope”, comes into play.

There are in fact two phases: **up to 14 Aug 2018** are not envisaged any radical changes from the previous WEEE 1 regulation as the products broadly correspond to the traditional types specified in Annex I and II of the Legislative Decree No 49 of 2014, save for the immediate inclusion as EEE of photovoltaic panels and save for any exclusions already provided for under the previous WEEE 1 regulation (such as, for example, large-scale stationary industrial tools, large-scale fixed installations and “dedicated” components thereof).

From **8 Aug 2018** onwards, the scope will be extended 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 would like to mention: arms and armaments, medical equipment and devices, research and development equipment, forklift trucks and other professional vehicles, electric transport means other than electric bicycles, and others.

This “***Equipment excluded***” diagram provides an overview of the products excluded from the WEEE regulation:

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**The most critical area of ​​the above diagram is that shown in box 4 and, more specifically, the section in which are excluded from the WEEE regime the following products: (1) “Unfinished” products/components, (2) Fixed installations, (3) “Large-scale stationary tools”, on which we shall now focus our attention.**

**(1) UNFINISHED PRODUCTS**

While with “***finished products****”* (subject to the WEEE regime) are meant products which, although designed to operate only in relation to another product, are intended to be utilized directly by an end-user without further adaptations (e.g.: a plug and play recorder for PCs; electric cables fitted with plug and socket, HDMI cables or network cables ready to use; network cards to be slotted into a laptop computer, etc.), with “***unfinished products***” (excluded from the WEEE regime) are meant those products intended for producers or installers and not for end-users, as they are in fact components that need to be incorporated in EEE by skilled operators or used to manufacture EEE (e.g.: not stand-alone smoke detectors, humidifiers, industrial PCs etc, and, more in general, all those products that by themselves do not fulfil any function since exclusively intended to be installed by professionals in a device or a system). See in this regard the FAQ 3.6. (part of the EU Commission document “*Frequently Asked Questions on Directive 2012/19/ EU*” published in April 2014 and available online at: [http://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Fec.europa.eu%2Fenvironment%2Fwaste%2Fweee%2Fpdf%2Ffaq.pdf&ei=dMYBVevpLcnYU-jSg5gN&usg=AFQjCNHt-axhtVAktryBZa41dFK-2QkqiQ&bvm=bv.87920726,d.d24)](http://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Fec.europa.eu%2Fenvironment%2Fwaste%2Fweee%2Fpdf%2Ffaq.pdf&ei=dMYBVevpLcnYU-jSg5gN&usg=AFQjCNHt-axhtVAktryBZa41dFK-2QkqiQ&bvm=bv.87920726,d.d24)%20) .

Only components packaged individually and intended to be assembled and readily installed with simple operations by end-users fall within the WEEE regulation (as is the case, for instance, of a blister pack containing all the components for a simple video doorphone system, that can be purchased by the end-user at any DIY store and assembled with simple operations by the same buyer-user).

**(2) LARGE-SCALE FIXED INSTALLATIONS**

These installations, as seen in the diagram above, are excluded from the WEEE regime, and it is thus important to be able to identify them with certainty.

Article 3.1(c) of the WEEE 2 Directive contains the following definition: ***“… a large-size combination of several types of apparatus and, where applicable, other devices, which: i) are assembled, installed and de-installed by professionals; ii) are intended to be used permanently as part of a building or a structure at a pre-defined and dedicated location; and iii) can only be replaced by the same specifically designed equipment”.*** This category may overlap with that of the “*Large-scale stationary tools*”, in the sense that one or more of these tools can also be part of large-scale fixed installations. However, as it will be explained below, a large-scale stationary tool may be considered “large” in dimensional terms with respect to other tools having the same function but not in absolute terms, while a large-scale fixed installation will be considered such according to absolute criteria.

The burden of proof to show that an installation falls within the excluded category of large-scale fixed installations is with the relevant economic operator.

**(3) LARGE-SCALE STATIONARY TOOLS**

Also such tools are excluded from the WEEE regulation and is thus important to identify them.

The definition given by Article 3.1(b) of the WEEE 2 Directive refers to a “… *large size assembly of machines, equipment, and/or components, functioning together for a specific application, permanently 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*”.

The Q3.1 of the [RoHS 2 FAQ guidance document](http://ec.europa.eu/environment/waste/rohs_eee/pdf/faq.pdf) (<http://ec.europa.eu/environment/waste/rohs_eee/events_rohs3_en.htm>), valid in this case also for WEEE 2 purposes, contains a number of examples and specifies that:

- as a general rule, bench top tools and telecommunication equipment do not fall within this category;

- an applicable criteria for the identification of this products category is the definition of “machine” given in Directive 2006/42/EC;

- any equipment that is not, or not readily, removable and/or is intended to be essentially used during its life at one single location, must be considered as “stationary”; consequently, it is not so much or just the fact that the tool is not mobile at determining its being “stationary”, but the purpose for which it is intended;

- any apparatus built into a building is not for this sole reason excluded since buildings are not EEE and consequently any equipment incorporated into it are not components (an ATM, for instance, falls under the WEEE 2 regulation); the fact that it is linked to the building can, however, be evidence of its being “stationary”.

- the burden of proof to show that an apparatus falls within the excluded category of tools is with the relevant economic operator.

**“LARGE-SCALE” (it applies to FIXED INSTALLATIONS and STATIONARY TOOLS)**

Both the “stationary industrial tools” and “fixed industrial installations” must be “*large-scale*”. In order to identify the size of the tool or installation, shall apply in this regard the following criteria (Q 3.1, RoHS 2 FAQ, page 12):

*“… One possible way of introducing a direct size criterion relates to* ***transportation.*** *The following guidance metrics and qualitative criteria can be applied for installations. If the installation exceeds the minimum requirements for one of the following criteria, it can be considered large-scale:*

*- If, when installing or de-installing the installation, it is too large to be moved in an ISO 20 foot container because the total sum of its parts as transported is larger than 5.71m x 2.35m x 2.39m, it can be considered large-scale.*

*- The maximum weight of many road trucks is 44 tonnes. Thus if, when installing or de-installing the installation, it is too heavy to be moved by a 44 tonne road truck, because the total sum of its parts as transported weighs more than the truck's load capacity, it can be considered large-scale.*

*- If heavy-duty cranes are needed for installation or de-installation, the installation can be considered large-scale.*

*- An installation that does not fit within a normal industrial environment, without the environment needing structural modification, can be considered large-scale. Examples for modifications are modified access areas, strengthened foundations etc.*

*- If an installation has a rated powe****r*** *greater than 375 kW, it can be considered "large-scale".*

The criteria above apply to FIXED INSTALLATIONS.

Any STATIONARY TOOLS having the above characteristics fall unquestionably within the WEEE 2 regulation but they also fall under it if, while not having them, their dimensions are significantly larger than other stationary tools.

**Conclusions**

**In conclusion: components, large-scale fixed installations, large-scale stationary tools do NOT fall within the WEEE regulation, either at present or when the “open scope” will enter into force on 15 August 2018: it is therefore important, even if this is not always easy, being able to recognize them.**

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