

Public Law
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Passive Equipment in Scope of German WEEE Act – Registration required by May 1, 2019

What has changed?

The German WEEE authority, the national register for waste electric equipment ("stiftung ear"), has surprisingly announced that from May 1, 2019 onwards the scope of application of WEEE will be extended to so-called "passive equipment", including cables, sockets, plugs, switches and busbars. From May 1, 2019 on, such products must be registered with stiftung ear in order to be placed on the German market.

What it means for you

Under the German Electrical and Electronic Equipment Act (*Elektro- und Elektronikgerätegesetz*, "**ElektroG**"), manufacturers of electrical and electronic equipment ("EEE") are, inter alia, required to register the type and brand of each EEE with the stiftung ear before it is placed on the market (Sec. 6 para. 1 ElektroG).

So far, "passive equipment", i.e. EEE which only conducts electrical current, but does not consume electricity to fulfil its function (e.g. sockets, plugs, switches, busbars), was considered excluded from the scope of the ElektroG. As a result, there was no need to register passive equipment with stiftung ear. Earlier this month, however, stiftung ear published a press communiqué informing the public that it changed its view and now considers passive equipment to qualify as EEE covered by the ElektroG, with the exception of passive equipment which is not being sold as finished product and cannot be used or installed without major effort by end customers, which will still be exempt from the definition of EEE. According to stiftung ear, in adapting its new approach it is only following the example of most other EU Member States which already apply WEEE obligations to such passive equipment.

To be sure, the actual act that stiftung ear is applying has not been amended in any way. Stiftung ear merely changed its interpretation, which may or may not be correct. It can be expected that eventually the courts will have to decide whether the new interpretation prevails, as not everyone may accept the new approach. Companies that decide not to accept the new interpretation run the risk of being found non-compliant, and that their non-registered products may not be placed on the German market. In addition, they run the risk of administrative fines of up to EUR 100,000.

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To comply with stiftung ear's new interpretation, manufacturers will have to file registrations with stiftung ear for their passive equipment and meet all further obligations that come with the new status, such as establishing a financial guarantee, labelling requirements and participation in a collection scheme for B2C products.

Actions to take

Manufacturers, importers and distributors of passive equipment should immediately review whether their equipment qualifies as EEE and, if so, file registrations with stiftung ear in order to ensure compliance with the ElektroG. According to the German Federal Environmental Agency (Umweltbundesamt, "UBA"), which is the competent authority to issue fines under the ElektroG, and which concurs with the new interpretation, registrations will have to be processed and approved by stiftung ear by May 1, 2019 at the latest. Since it currently takes up to 12 weeks for stiftung ear to process new registrations, it is advisable to register the newly in-scope passive equipment by mid-February 2019 at the latest in order to meet the said deadline.

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