

Royal Decree 110/2015 of 20 February on waste electrical and electronic equipment: key changes

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Royal Decree 110/2015 of 20 February (Official Journal of Spain [abbrev.: BOE] of 21 February) on waste electrical and electronic equipment (hereinafter, waste EEE or WEEE) (the "Royal Decree") has been passed, as reiterated in its Explanatory Notes, with a double purpose: to transpose into the law of Spain the obligations under the new European rules on WEEE (Directive 2012/19/EU, hereinafter "WEEE Directive" or "Directive"), and overcome the shortcomings identified in the management of such waste, fostering a more effective and environmentally sound system in the application of the principles inspiring the Spanish Waste and Contaminated Soil Act 22/2011, which enables the passing of this piece of legislation.

The peculiarity of waste electrical and electronic equipment (such as household appliances, IT and telecommunications equipment, lighting equipment, consumer equipment or — a novelty with respect to previous legislation — photovoltaic panels), consists of two features present therein: the high content of valuable substances (e.g., mobile (cell) phones can contain over forty elements from the periodic table, including precious metals like silver, gold and palladium) and, at the same time, hazardous substances that may contaminate the environment or be harmful to human health if the equipment is not managed and treated properly.

The volume of generated WEEE has increased dramatically in recent years, mainly due to the increasing replacement of equipment with ever shorter innovation cycles and the fact, noted by the *Consejo de Estado* (supreme advisory body to the Spanish Government) in its report on the Royal Decree, that industrial production has imposed the technique of "planned obsolescence" so that in a very short time EEE cannot be repaired, but needs to be replaced entirely.

As a result of the above, the collection, management and treatment of the flow of WEEE requires a specific legal regime provided, in accordance with the guidelines laid down by the Directive, by this Royal Decree.

The Royal Decree repeals earlier secondary executive legislation on the same subject matter (Royal Decree 208/2005), and is recognised the nature of basic legislation (first final provision), authorising the different ministries involved to pass the rules required to implement and apply the same, as well as to adapt it to technical innovations or new EU legislation (third final provision).

The entry into force of the Royal Decree took place on the day following its publication in the BOE, but contains several transitory (transitional) provisions, most notably with regards to the scope discussed below.

Scope, definitions and entry into force

(Part I, transitory provisions, fourth final provision and schedules I-IV)

- The primary objective of the Royal Decree is to adapt industry-specific regulation on extended producer responsibility in respect of WEEE to Act 22/2011, while incorporating Directive 2012/19/EU into domestic legislation.
- The scope is defined (as provided in the WEEE Directive) by the following **transitional rules**:
 - a) From its entry into force (the day following its publication in the BOE) until 14 August 2018, it shall apply to EEE falling within the categories set out in Schedule I (Schedule II contains an indicative list of EEE which falls within the categories set out in Schedule I).
 - b) From 15 August 2018 it shall apply to EEE falling within the categories set out in Schedule III (also with an indicative list in Schedule IV). This schedule includes 7 categories which correspond to the 6 listed in the Directive plus one relating to large photovoltaic panels (external dimension more than 50 cm), which have been differentiated into a category owing to their singularities (in the Directive they appear encompassed within category 4: Large Equipment).
- The Royal Decree sets out a number of **exclusions**, in line with the WEEE Directive, including (for the two periods of application) "equipment which is specifically designed and installed as part of another type of equipment that is excluded from or does not fall within the scope and can fulfil its function only if it is part of that equipment, such as vehicles or means of transport", as well as large-scale stationary industrial tools and fixed installations.
- The **definitions** include those under the WEEE Directive (which refers, like the Royal Decree, to some provided in European legislation on waste, here included in Act 22/2011). One of the most notable changes is the inclusion in the concept of "producer" of those who sell EEE in Spain by means of distant (remote) communication, who, in accordance with the possibility provided in art. 17 of the WEEE Directive, shall appoint, by power of attorney (written mandate), an "authorised representative" as person responsible for fulfilling the obligations of the producer in the country.
- Aside from the definitions under the Directive, the Royal Decree adds others necessary to apply the management system subject to regulation, such as the weight of EEE or WEEE or the logistic distribution platform.
- Finally, the Royal Decree introduces (in art. 43(2)(d) and (e)) a significant change in respect of earlier regulation with regard to its application to built-in batteries (and accumulators) that cannot be removed by the user and industrial oils also incorporated into this EEE. Both cases (batteries and oils) involve products that, once WEEE has been generated, are disposed of and transferred along with the WEEE to the final decontamination plant, where the batteries and oils are removed for independent management. Well, the novelty is that the Royal Decree excludes the aforementioned batteries and oils from the rules on extended producer responsibility to which until now they were subject (Royal Decrees 106/2008 and 679/2006, respectively) and, consequently, attributes to EEE producers the responsibility for financing the costs deriving from such waste batteries and oils in WEEE decontamination centres (obligation that heretofore lied with the producers of the batteries and oils).

The above rule is supplemented by the second additional provision (second paragraph) which provides that the rule applies "without prejudice to the specific rules on (...) industrial oils and batteries and accumulators"; this means that, in any case, all requirements set out in Royal Decrees 106/2008 and 679/2006 that differ from the financial rules resulting from the extended producer responsibility are applicable to these batteries and oils (such as, for example, technical requirements, compliance with specific targets, providing information to the competent authorities and, in the case of industrial oils, the obligation to draw up prevention plans).

Rules on the reuse of used EEE and of WEEE: Differentiation between product and waste

(Parts II and III)

- Measures to prolong where possible the life cycle of EEE are incorporated in order to reduce the production of WEEE.
- The Royal Decree distinguishes, in its definitions, between waste EEE and “used EEE” (a distinction that results from the WEEE Directive even though not contained therein), which is EEE that despite having been used, has not become waste as its holder does not discard it and intends a future use for the same.
- Used EEE for reuse may be given to not-for-profit (non-profit) organisations, relatives or friends (obviously) or establishments engaged in the sale of resale. In this regard, used EEE is merely goods not subject to the rules on waste and, therefore, its delivery to local repair and sale of used EEE establishments is a mere delivery of goods, so these establishments are not considered waste management facilities.

2.

However, repair and sale of used EEE establishments are highly regulated, as they are subject to trade and consumer protection rules with some additional specific provisions: the obligation of proving the transaction involving the used equipment by way of a document, such as a formal invoice accompanying the EEE; and the obligation on these establishments to keep “a register of this equipment indicating the units, type, brand and serial number, and the origin and destination of the same” (art. 12(1) of the Public Safety Act, which provides this type of registration for companies engaged in the “repair of used objects”). These controls can be used to facilitate the liability for defective products, harder to elucidate in these cases, but certainly costly.

- Similarly, rules are laid down for the “preparation for reuse”, which is that operation by which WEEE (when already regarded as waste because the holder discarded it or has that obligation or intention) is prepared to be reused after the repair or replacement of defective components. This is, according to art. 3(s) of Act 22/2011, a waste recovery operation (specifically, the R12 operation under Schedule II to that Act) and, therefore, the facilities in which it is performed must have a waste treatment permit (even if said facilities are social economy enterprises). So that such centres can better carry out their business, EEE producers are required to provide certain information regarding their equipment.

EEE marking and information and EEE producer registration obligations

(Part II)

- With regard to the marking of products, the Directive provides the need to stamp indelibly on each piece of equipment the symbol shown in Annex IX to the same, which informs on the requirement not to dispose of WEEE as unsorted private household waste.
- An issue that caused controversy in the drafting of the Royal Decree was related to the possibility that producers inform on the costs of waste product treatment. The draft Royal Decree prohibited providing this information, but the report of the *Consejo de Estado* considered that such a prohibition lacked legal support and ran counter to the spirit of the WEEE Directive, so the Royal Decree in the end expressly allows these costs to be indicated to end consumers, with the limit that such information “shall not form part of the invoice or sales receipt” (given the high cost it would involve for small distributors or shops). Nothing is said of the information to downstream consumers, so it is understood that the possibility of informing on these costs separately is permitted without restriction.
- EEE producers or their authorised representatives must register with the Integrated Industrial Register provided in the Industry Act, under the special section for electrical and electronic equipment, submitting the information required under Schedule VI to the Royal Decree. Upon registration they will have an EEE producer ID number.

3.

Separate collection, transport and management of EEE

(Part IV)

- The Royal Decree provides four possible **channels of separate WEEE collection**, which involves a more “open” model than the previous one, to the extent that direct responsibility can lie with operators other than the producers, as is the case with waste management: (i) by municipalities; (ii) by distributors; (iii) by EEE producers and (iv) directly by waste managers, including duly authorised social economy enterprises.
- An aim is to provide the consumer with adequate methods of returning WEEE so as to avoid unwanted practices such as its collection by unlawful managers or its deposit at thoroughfares (conduct that is punishable under Act 22/2011).

Each year the Spanish Ministry for Agriculture, Food and Environment (abbrev.: MAGRAMA) shall fix the **minimum separate WEEE collection targets** to be met by producers pursuant to the chosen extended (individual or collective) responsibility regime at the state and regional level, expressed in weight (and categories), differentiating between household and business WEEE and according to the market share from the Integrated Industrial Register.

- We can highlight the following **common rules for WEEE collection and transport**:
 - a) The need to identify waste once returned to ensure control and traceability of the same, and the obligations to record WEEE received by the facilities and managers through the WEEE electronic platform.
 - b) The collection and transport conditions must allow “the preparation for reuse of WEEE and its components” and avoid breakage, spillage or release of toxic substances.
 - c) Schedule VII.B includes a number of specific conditions for the separate collection of WEEE containing mercury, lead, cadmium, phosphorus or ozone-depleting substances.
 - d) Facilities for collection or storage prior to treatment must obtain an administrative permit and comply, in this regard, with the standard conditions for storage and classification (in line with the Spanish LoW-WEEE codes) of waste EEE under Schedule VIII.

A) Separate collection of WEEE by Local Authorities

- Local authorities shall establish systems that allow for separate collection of household waste from users free-of-charge and to take delivery of household WEEE from distributors. The different collection options that may apply are regulated.
- This service may be provided indirectly through contracts or agreements which may include social clauses for social economy enterprises.
- Local collection facilities must issue receipts to those who return WEEE and shall evaluate such WEEE to prioritise its preparation for reuse before transfer to treatment facilities.

B) Separate collection of household WEEE by distributors

- All distributors (including those using distance selling) must accept, when users purchase new household EEE, the free-of-charge return of WEEE equivalent to the purchased equipment.
- In addition, distributors with sales areas relating to EEE of at least 400 m² shall provide for the collection of very small WEEE (defined as those "which have an external dimension of no more than twenty-five centimetres") free of charge to end users and with no obligation to buy EEE of an equivalent type. This requirement applies in all cases, without applying the exception envisaged under the Directive of an assessment showing "that alternative existing collection schemes are likely to be at least as effective".
- For the control and traceability of WEEE, a receipt or dispatch note must always be issued with a copy thereof handed over to the user, the distributor having in turn to hand over the receipt to the WEEE recipient (logistic distribution platform or destination handler).

C) Separate collection of WEEE organised by EEE producers**4.**

- Producers are required to organise the separate collection of business waste EEE where such EEE was placed by them on the market after August 2005 (date of entry into force of the obligations under the previous Royal Decree 208/2005) through individual or collective extended producer responsibility systems regulated by the Royal Decree.
- For household waste EEE, producers may set up collection networks, but competent authorities may impose an obligation to organise them "due to insufficient collection in certain areas or specific hazard characteristics of the waste". This is explained by the fact that, along with producers, not only local authorities but also registered waste EEE managers are involved in the collection of waste, so it must be ensured that, in any event, household generators will have at their disposal a logistic system with selective collection and proper management of WEEE.

D) Separate collection of WEEE by waste managers

- Collection may be performed directly by the registered WEEE managers, which constitutes one of the novelties of this new management system. These managers, who are only subject to the prior communication rules (under Act 22/2011), are required to comply with the common conditions of collection, transport and delivery to the user or holder of a receipt with the information specified by the Royal Decree.

Treatment of waste EEE

(Part V and Schedule XVI)

5.**A) The preparation for reuse of WEEE and its components** is prioritised, in accordance with the waste hierarchy principle (as set out in Act 22/2011).

- As a pre-requisite, and in accordance with the Directive, the Royal Decree provides that "EEE producers shall not prevent the reuse of WEEE through specific design characteristics or specific manufacturing processes, unless such characteristics or manufacturing processes afford great advantages in terms of safety or environmental protection"(art. 6(2)).
- The preparation for reuse is distinguished, in the terms already stated, from the resale of used EEE, which has not been discarded by its holder.

5.

- Schedule XIV sets out the targets of WEEE recovery albeit with a difference regarding the regulation under the Directive. Point A sets out the same targets as the Directive, which must be met by “specific treatment managers” (these targets are broken down into categories, taking into account the different rule application periods and, in some cases, sets joint recycling and preparation for reuse targets).

Furthermore (and herein lies the novelty), Point B provides that producers, in addition to meeting the recovery targets set out in Point A, must meet specific preparation for reuse targets (not provided in the Directive) regarding the fractions collected under each of the listed categories. The preamble to the Royal Decree states that the intention is to enhance this activity, based on “experiences and achievements in this type of treatment of countries with a development similar to that of Spain”.

- Unlike the simple resale of used EEE, the preparation for reuse of waste EEE shall be carried out by managers that have an administrative permit, called preparation for reuse centres (abbrev.: CPR). Schedule IV.B sets out the technical requirements to be met and defines their functions, which include, besides the “verification, segregation, repair, cleaning” of WEEE, the marketing thereof, with “a commercial network, open to the public, informing that such equipment is recovered from WEEE, in addition to providing a replacement and repair aftersales service for equipment sold”.
- Schedule IV, for its part, regulates the criteria for classifying WEEE for preparation for reuse (specifying which must be separated from the rest as “non-reusable WEEE”), as well as the procedures and stages that must be applied in the preparation for reuse of EEE.

B) Specific treatment of waste EEE

- WEEE that has not previously undergone treatment cannot be disposed of.

Since the preparation for reuse and recycling can be carried out by managers other than treatment facilities, they are allowed to reach agreements so that both processes count towards the fulfilment of recovery targets, provided they are calculated on the basis of WEEE collected by the managers included in the agreement.

- WEEE shall be treated in facilities that have a specific administrative permit (in particular, as provided in art. 37 of Act 22/2011), awarded after confirming fulfilment of the requirements of Schedule XIII related to specific WEEE treatments (which regulates all technical detail for facilities and methods of treatment of this waste), as well as of the recovery targets under Schedule XIV.

C) Specific shipping rules

- No changes in this respect. The Royal Decree merely states that WEEE shipments, either within the country or across borders, shall comply with Act 22/2011 (specifically, arts. 25, 26 and 29(2) regarding the rules on administrative step-ins).

Allocation of responsibilities in the collection and management of WEEE: a new model of extended producer responsibility

(Article 38 and Part VIII)

6.

- The Royal Decree introduces a new model of extended producer responsibility (abbrev.: RAP), which allows for assignment of direct responsibility over the management of WEEE to economic operators other than producers.
- Thus, compared to the system under the RD 208/2005, in which the producers (or, on their behalf, collective schemes/SIG) assumed entirely the responsibility and financing for the collection and proper management of all waste included in its scope, the new Royal Decree also includes, prominently, registered waste managers.
- But, in contrast to the liberalisation of management, fulfilment of the recovery targets seems to be required only of producers under art. 38(1)(d) inasmuch as it states that producers “shall organise and finance their respective collection and management of WEEE” and that in terms of management, “they shall meet the recovery targets set out in Annex XIV, points A and B”.

However, this rule should be interpreted consistently with the rest of the Royal Decree and, in particular, with the proviso in art. 32(5), which states that “EEE producers, in the organisation of the WEEE management they finance, as well dealers, shall fulfil the recovery targets set out in Schedule XIV.B and shall prove such fulfilment with the certification of authorised treatment facilities with which they collaborate and the data available on the electronic platform provided for in art. 55.” That is, the responsibility for meeting recovery targets is attached to producers only in the organisation of WEEE management they finance, through proof of fulfilment of the above targets by the treatment facilities to which they have delivered “their” WEEE. However, waste managers (basically collectors) that have deployed their own logistic collection networks are not subject to a similar requirement regardless of producers.

- Finally, we refer to that mentioned in section 1 regarding the application of extended producer responsibility to non-removable batteries and accumulators and industrial oils incorporated into EEE.

Financing of the WEEE management system in the new extended producer responsibility system

(Part VIII)

7.

- Financing of the system rests mainly with WEEE producers.
- Regarding **household waste EEE**, the Royal Decree states that producers shall be responsible for financing “at least the collection, transport and treatment of WEEE deposited at the system’s collection points or networks, the collection facilities of local authorities and those of distributors”.

In the case of WEEE collected by managers, producers should only finance the collection, transportation and treatment once they have reached an agreement with the managers.

Similarly, the management of WEEE that has been commissioned by local authorities or directly by distributors to authorised managers “may be financed by EEE producers provided it is based on agreements reached with managers”.

- In the case of **business WEEE**, producers shall provide at least financing of the costs of collection, preparation for reuse, specific treatment, recovery and disposal of WEEE from products placed on the market after 2005. It is provided, however, that the producers and users of such WEEE may conclude agreements stipulating other financing methods.
- In addition, business WEEE producers will take part in financing the WEEE working group and WEEE electronic platform.

Coordination system: the Coordination Committee, the WEEE working group and the WEEE electronic management platform

(Article 5 and Part X)

8.

- Pursuant to art. 13 of Act 22/2011, the coordination of this complex waste EEE management system, necessary to ensure that the recovery targets set out in Annex XIV are met by all authorities and operators involved in the same, is assigned to the Waste Coordination Committee attached to MAGRAMA.
- To perform the functions of coordination, the Coordination Committee will rely on a working group specialised in this area that is scarcely defined in the Royal Decree, which merely states that “it will involve affected sectors, especially EEE producers, systems of extended producer responsibility, distributors and managers”.
- The tasks of the WEEE working group are important because each year it must propose to the Coordination Committee the minimum separate collection targets for the annual compliance period, at the state and regional level, by category and according to business or household use, which must be met by producers through the extended responsibility systems.
- Likewise, in the event that the extended responsibility systems (which include, as stated above, both waste producers and managers and specific treatment facilities) do not meet their targets, it lies with the WEEE working group to issue a report analysing the seriousness of the breach and proposing possible measures, which may include “adjustments in the following year’s targets, alterations of permit conditions” or “the beginning of penalty proceedings by the competent authority.”
- The WEEE electronic waste management platform is created as a tool for collecting information on the collection and management of waste EEE from all channels and operators provided in the Royal Decree, allowing the Administration to have knowledge of the situation or traceability in each stage of the waste. MAGRAMA and WEEE producers, at the very least, shall take part in the financing of this platform.
- The Royal Decree lays down the obligation, reiterated throughout its operative part, that “all operators involved in the collection and management of WEEE shall enter and keep up to date, in the electronic platform, data on collected and managed WEEE every time WEEE is collected, enters or departs their facilities or establishments, or whenever any other information that is entered in the platform is changed”.
- Operators can only access data in the electronic platform that is related to their business.

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