

CORRESPONDENTS' GUIDELINES No 1¹

Subject: Shipments of Waste Electrical and Electronic Equipment (WEEE)

These Correspondents' guidelines represent the common understanding of all Member States on how Regulation (EEC) No 259/93 (Waste Shipment Regulation) should be interpreted. The guidelines were provisionally agreed by the correspondents at a meeting on 14/15 December 2006 organised pursuant to Article 37 of Regulation (EEC) No 259/93 and amended at a meeting on 8/9 March 2007. They are not legally binding. The binding interpretation of Community law is the exclusive competence of the European Court of Justice. The guidelines apply from 15 March 2007 and will be repealed with effect from 12 July 2007.

1. Introduction

These Correspondents' guidelines on used electrical and electronic equipment provide information for:

- persons arranging shipments of waste electrical and electronic equipment (WEEE);
- holders of electrical and electronic equipment arranging transboundary transports of this equipment who wish to avoid non-compliance with the Waste Shipment Regulation;
- authorities responsible for the enforcement of the Waste Shipment Regulation.

The control procedures that apply depend, in the first instance, on whether the material in question is waste as defined in Article 1(a) of the Waste Framework Directive, in national legislation or national interpretation. If the competent authorities of dispatch and of destination cannot agree on the classification as regards the distinction between waste and non-waste, the subject matter should be treated as if it were waste.

Whether or not a substance is discarded as a waste, and when waste ceases to be waste is determined on a case by case basis and the interpretation of the law is ultimately a matter for the courts.

If the material is a waste, the control procedures depend on whether the waste is notifiable or non-notifiable (see section 3) under the Waste Shipment Regulation (**Reference 1**), whether it is destined for recovery or disposal, and whether there are additional controls in the country of destination.

2. Distinction between EEE and WEEE

EEE becomes WEEE if its holder discards it, or intends or is required to discard it. To make this judgement it is necessary to examine the history of an item on a case by case basis. However, there are characteristics of electrical and electronic equipment that are likely to indicate whether it is waste or not.

Where the claim is made that used EEE is not WEEE, the following should be provided:

- a copy of the invoice and contract relating to the sale and/or transfer of ownership of the EEE which states that the equipment is for direct re-use and fully functional;
- evidence of evaluation/testing in the form of copy of the records (certificate of testing – proof of functional capability) on every item within the consignment and a protocol containing all record information (see below);

¹ These Correspondents' guidelines are envisaged to be amended before the date of application of Regulation (EC) No 1013/2006 on shipments of waste, inter alia to make it consistent with this new Regulation.

- a declaration made by the holder who arranges the transport of the EEE that none of the material within the consignment is waste as defined by Article 1(a) of the Waste Framework Directive, and
- sufficient packaging to protect it from damage during transportation, loading and unloading.

Where the above criteria are met, EEE would not normally be considered waste if it is

- fully functioning and is not destined for any of the operations listed in Annex II of the Waste Framework Directive 2006/12/EEC (recovery or disposal operations) and is directly reused for the purpose for which it was originally intended or presented for sale or exported for the purpose of being put back to direct reuse or sold to end consumers for such reuse,
- sent back as defective batches for repair to the producer or repair centres (e.g. under warranty) with the intention of re-use.

EEE would normally be considered waste (see example in **Appendix 1**) if:

- the product is not complete - essential parts are missing;
- it shows physical damage that impairs its functionality or safety, as defined in relevant standards;
- the packaging for protecting it from damage during transport and loading and unloading operations is insufficient;
- the appearance is generally worn or damaged, thus reducing the marketability of the item(s);
- the item has among its constituent part(s) anything that is required to be discarded or is prohibited under community or national legislation;²
- the EEE is destined for disposal or recycling instead of re-use;
- there is no regular market for the EEE (see further indicators);
- it is old or out-dated EEE destined for cannibalization (to gain spare parts).

Prior to any transboundary transport of EEE the holder should be in a position to provide information to any relevant state authorities (e.g. customs, police or environmental agencies) that proves that the above criteria for EEE are met. Failure to meet these criteria would generally indicate to the relevant authorities that the material is WEEE and a precautionary approach to environmental protection would be taken in these circumstances, notably in cases where the holder has to prove that the equipment was not waste; in some Member States, however, it remains for the state authorities to prove that the equipment at issue is WEEE.

The following are the recommended steps that traders in used EEE should take to demonstrate that the items being shipped are used EEE rather than WEEE:

a) Testing

The tests that should be conducted depend on the kind of EEE (see Annex IB of Directive 2002/96/EC on waste electrical and electronic equipment (WEEE Directive - **Reference 2**)). Functionality should be tested and hazardous substances should be evaluated.

The completion of a visual inspection without testing functionality is unlikely to be sufficient.

For most of the used EEE a functionality test of the key functions is sufficient.

² E.g. asbestos, PCBs, CFCs

Results of evaluation and testing should be recorded and a record (certificate of testing, displaying/stating functional capability) should be placed on each tested EEE.

b) Record

The record should be fixed securely but not permanently on either the EEE itself (if not packed) or on the packaging so it can be read without unpacking the equipment.

The record should contain the following information:

1. Name of item (WEEE Directive, Name of the equipment and number of category in Annex I);
2. Identification Number of the item (type no.);
3. Year of Production (if available);
4. Name and address of the company responsible for evidence of functionality;
5. Result of tests (e.g. naming defective parts and defect or indication of full functionality);
6. Kind of tests performed.

The protocol of testing and evaluation should accompany the transport.

c) Packaging

Insufficient packaging for protecting items from damage during transportation, loading and unloading operations is an indication that the item(s) may be waste. In general, the observation of poor packaging should lead enforcement agencies/authorities to make further enquiries regarding the item(s) being transported.

3. Shipments of WEEE

Shipments of WEEE are regulated by the Waste Shipment Regulation (WSR). In certain circumstances the WSR provides for shipments of waste to be subject to additional regulatory controls under the national legislation of Member States or other importing countries; for example there may be a prohibition on disposal.

3.1 Shipments of WEEE destined for disposal

- **Shipments within the EU**

All such shipments of waste within the EU are subject to the notification procedure referred to in the WSR. Member States may generally prohibit shipments of waste to or from other Member States for disposal and enquiries should be made by the relevant competent authorities to establish if the planned shipment for disposal is allowed under national legislation.

- **Exports from the EU**

All exports from the EU destined for disposal are prohibited (except waste shipments to EFTA states being Parties to the Basel Convention).

- **Imports into the EU**

In principle, imports from outside the EU destined for disposal are allowed, unless the country of dispatch is not a Party to the Basel Convention. However, EU Member States may prohibit such imports where they consider that there are sound environmental reasons for doing so. All imports for disposal are subject to the notification procedure referred to in the WSR.

3.2 Shipments of WEEE destined for recovery

- **Shipments within the EU**

Shipments within the EU may be subject to either the notification procedure referred to in the WSR or they may be subject to another, lower level, of WSR controls (see Annex II of WSR; requirements pursuant to Art. 11 of the WSR). The applicable controls are determined by the classification of the WEEE in question in the relevant lists of waste annexed to the WSR. The WSR lists of waste differ from those in the European Waste List (EWL) in respect of shipments within the Community. A precautionary approach should be taken to the classification of WEEE. If it is not clear that the WEEE in question is covered by an entry in Annex II of WSR (Green List), the shipment should be notified.

- **Exports from the EU**

The controls that apply depend on the classification of the waste ('hazardous' – 'non hazardous' (see **Appendix 2**) and the provisions applicable to the country of destination³. Exports of hazardous waste for recovery to non-OECD countries are prohibited⁴. Again, the lists that determine the levels of control are as annexed to the WSR and reference is made to the EWL for exports to non-OECD countries under specific circumstances as set out in the WSR⁵.

- **Imports into the EU**

In principle, imports from outside the EU destined for recovery are allowed, unless the country of dispatch is not a Party to the Basel Convention. The classification of the waste (see **Appendix 2**) determines the notification procedure according to the Waste Shipment Regulation applicable for such shipments⁶.

4. Controls

- Inspections are undertaken by state authorities (e.g. police, customs, and inspectors) at facilities and during the transport. Those persons shipping used EEE should ensure that the equipment is accompanied by proof of adequate testing⁷, and that it is appropriately packaged in order to demonstrate that the items concerned are not WEEE. Where it is asserted that non-hazardous WEEE is being shipped, those responsible for the shipment should ensure that it is accompanied by evidence of appropriate testing to demonstrate the non-hazardous nature of the waste that is being shipped.
- For practical reasons of control, every load (e.g. shipping container, lorry) of used EEE should be accompanied by a
 - a. CMR document,
 - b. proof of the evaluation/testing in form of copy of the records and a protocol containing all testing and recording information (see Appendix 1) on the single items of the transport; and a
 - c. declaration of the liable person on its responsibility.
- In the absence of appropriate documentation and packaging state authorities are likely to presume that the material is hazardous WEEE and, in the absence of a notification in accordance with the requirements of the Waste Shipment Regulation, presume that the load comprises an illegal shipment. In these circumstances the relevant competent au-

³ See Council Regulation 1420/1999 and Commission Regulation 1547/1999 as amended.

⁴ See Annex V of the WSR.

⁵ Shipments of outdated refrigeration and other equipment (air conditioning systems etc) containing CFCs, HFCs, HCFCs, FCs (to third countries) for the purpose of re-use is prohibited pursuant to the EC Regulation on Ozone Depleting Substances No. 2037/2000

⁶ For green-listed waste (non-hazardous waste) in Annex II of the WSR requirements are laid down in Art. 11 of the WSR.

⁷ Certificate of testing, displaying/stating functional capability and issued on the condition only that the EEE can be used directly without major repair; see section 1.

thorities will be informed and the load will be dealt with in accordance with Article 26 of the Waste Shipment Regulation. In the majority of cases those responsible for the shipment will have to repatriate the waste to the country of dispatch at their own expense and may be liable to a criminal sanction. In those Member States where the burden is on the state authorities to prove the items are WEEE rather than EEE, absence of the appropriate documentation and packaging is likely to lead to significant delays to the onward transport of the waste whilst the necessary investigations are carried out to establish the status of the items being shipped.

An example of when EEE would normally be considered waste

IT products may be defined as waste if they have any of the following:

- 1. A defect that materially affects its functionality. For example it does not:**
 - a. power up;
 - b. perform BIOS or internal set-up routines or self-checks fail;
 - c. have a functioning motherboard;
 - d. communicate with the host;
 - e. print/scan/copy a test page or the page is not identifiable or readable or is blurred or lined;
 - f. read, write or record/burn.
- 2. A physical damage that impairs its functionality or safety, as defined in relevant standards. Physical damage includes inter alia:**
 - a. a screen that has physical damage, such as burn marks, or is broken, cracked, heavily scratched or marked, or that materially distorts image quality;
 - b. a signal (input) cable has been cut off or cannot be easily replaced without recourse to opening the case;
 - c. a faulty Hard Disk Drive or a faulty RAM or a faulty Video Card; or
 - d. batteries containing lead, mercury or cadmium or batteries containing hazardous liquid cathodes that are unable to be charged or to hold power.
- 3. An insufficient packaging to protect it from damage during transportation, loading and unloading operations**

Classification of waste for shipments destined for recovery

The approach to classification of waste is partly governed by whether the waste is destined for a Member State of the EU (see **Reference 3**) or a member country of the Organisation for Economic Co-operation and Development (OECD) (see **Reference 4**) or a non-OECD country.

Section A details the classification procedure for shipments to Member States of the EU and OECD member countries. Section B details the two stage classification process that applies to exports to non-OECD countries; firstly to determine whether or not the export is potentially permitted (Stage 1) and, secondly, if potentially permitted, to determine the controls applicable to the export (Stage 2).

A. Shipments within the EU and from the EU to OECD member countries

The Annexes to the Waste Shipment Regulation (**Reference 1**) provide waste lists to be used for the classification of waste destined for recovery operations. For the classification of WEEE Annexes II, III and IV of the Waste Shipment Regulation are relevant. These are referred to as:

- The '**green**' list (Annex II)⁸ containing wastes not subject to prior notification and consent (basic information must accompany the waste as specified in Article 11 of the Waste Shipment Regulation)
- The '**amber/red**' list (Annexes III and IV) containing controlled wastes

In cases of doubt the competent authority of dispatch should be consulted. **Box 1** lists the main categories relating to WEEE that should be considered when attempting to categorise WEEE that hasn't been subject to any sort of processing prior to shipment. Processed fractions of WEEE may fall within other categories contained in the Annexes to the WSR.

⁸ **Note 1** – Green-listed wastes that are contaminated with hazardous materials may be classified as controlled waste.
Note 2 – Wastes that do not feature in any of the lists are regarded as unassigned and are controlled wastes.

Box 1 Categories relating to WEEE in the Waste Shipment Regulation

Annex II

GC010 Electrical assemblies consisting only of metals or alloys

GC020 Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc.) and reclaimed electronic components suitable for base and precious metal recovery

Annex III

AA100 Mercury waste and residues^{♦)}

AA170 Lead acid batteries, whole or crushed

AA180 Used batteries or accumulators, whole or crushed, other than lead acid batteries, and waste and scrap arising from the production of batteries and accumulators, not otherwise specified or included

AB040 Glass waste from cathode ray tubes and other activated glass

AC150 Chlorofluorocarbons

Annex IV – Red List

RA 010 Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB) and/or polychlorinated terphenyl (PCT) and/or polybrominated biphenyl (PBB), including any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more

RB010 Asbestos (dust and fibres)

Waste not listed– Annex IV (Art. 10 of the WSR)

- WEEE, or parts of WEEE not listed elsewhere
- Parts of WEEE, listed in Annex II but contaminated by other materials to an extent which (a) increases the risk associated with the waste sufficiently to render it appropriate for inclusion in the amber or red lists, or (b) prevents the recovery of the waste in an environmentally sound manner

^{♦)} This listing includes wastes in the form of ash, residue, slag, dross, skimming, scaling, dust, powder, sludge and cake, unless a material is expressly listed elsewhere

B. Exports to non-OECD countries (application of the export prohibition)

For the classification of WEEE, Annex V to the Waste Shipment Regulation or the competent authority should be consulted. **Box 2** lists the main categories relating to WEEE in Part 1 of Annex V. There is a two stage process to be completed before waste may be exported to non-OECD countries.

Stage 1

Annex V to the Waste Shipment Regulation (**Reference 1**) lists the wastes which fall under the prohibition of exports of hazardous wastes to non-OECD countries. This stage determines only whether a proposed export to a non-OECD country is prohibited or potentially permitted.

Box 2 Categories in Part 1 of Annex V relating to WEEE

Part 1 List A (prohibited for export)

- A1160** Waste lead-acid batteries, whole or crushed
- A1170** Unsorted waste batteries excluding mixtures of only list B batteries. Waste batteries not specified on list B containing Annex I constituents to an extent that render them hazardous
- A1180** Waste electrical and electronic assemblies or scrap^{*)} containing components such as accumulators and other batteries included on list A, mercury switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III (note the related entry on list B B1110)^{*)}
- A2010** Glass from cathode ray tubes and other activated glasses
- A2050** Waste asbestos (dust and fibres)

Part 1 List B (potentially permitted for export)

- B1040** Scrap assemblies from electronic power generation not contaminated with lubricating oil, PCB or PCT to an extent to render them hazardous
- B1070** Waste of copper and copper alloys in dispersible form, unless they contain Annex I constituents to an extent that they exhibit Annex III characteristics
- B1090** Waste batteries conforming to a specification, excluding those made with lead, cadmium or mercury⁹⁾
- B1110** Electrical and electronic assemblies:
- Electronic assemblies consisting only of metals or alloys
 - Waste electrical and electronic assemblies or scrap^{*)} (including printed circuit boards) not containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and activated glass and PCB capacitors, or not contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Annex III (note the related entry on list A A1180)
 - Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct re-use^{*)} and not for recycling or final disposal^{*)}

^{*)} This entry does not include scrap assemblies from electric power generation.

^{*)} PCBs are at a concentration level of 50 mg/kg or more¹⁰⁾.

^{*)} This entry does not include scrap assemblies from electric power generation.

^{*)} Re-use can include repair, refurbishment or upgrading, but not major re-assembly.

^{*)} In some countries these materials destined for direct re-use are not considered wastes.

⁹⁾ These batteries are non-hazardous wastes according to Art. 1.1. a of the Basel Convention; however applying the hazard criteria of the EU all types of batteries fulfil a hazard criterion due to their electrolytes (e.g. corrosive, harmful, leachate, ecotoxic) and should be subject to the export prohibition into non-OECD countries applying the criteria of Annex V of the WSR (= wastes under Article 1.1. b of the Basel Convention)

¹⁰⁾ The national legislation on the determination of PCBs must be taken into consideration (e.g. 6 or 7 PCB- congeners; sometimes multiplication of the sum of these congeners with factor 5 is required), especially considering results of analyses carried out in non-EU countries or compliance with limit values required in non-EU-countries

Annex V has three parts:

- Part 1 is divided into List A and List B. If a waste is listed on List A, then its export to non-OECD countries is prohibited.
- If a waste is on List B, its export to non-OECD countries is potentially permitted. However, this does not preclude, in exceptional cases, a Member State prohibiting the shipment of a waste on List B to a non-OECD country because it considers that the waste displays a hazardous characteristic listed in Annex III to Directive 91/689/EEC.
- Parts 2 and 3 of Annex V should only be considered if a waste does not appear in either List A or List B of Part 1. If a waste is identified as hazardous in Part 2 of Annex V (by being marked by an asterisk) or is listed in Part 3 of Annex V then its export to non-OECD countries is prohibited. If the waste is not marked with an asterisk in Part 2 of Annex V then its export to non-OECD countries is potentially permitted. If waste does not appear on the lists in either Part 2 or 3 to Annex V, then export to non-OECD countries is potentially permitted subject to the appropriate controls.

In **sum**, waste may potentially be exported to non-OECD countries if:

- it appears on Part 1, List B and is not exceptionally prohibited; or if it does not appear on list B,
- it is not prohibited by virtue of its listing in Annex V.

Stage 2

Exports of waste not subject to the export prohibition to non-OECD countries

This stage only needs to be considered if Stage 1 indicates that the waste export is potentially permitted.

If the waste is not described by any entry in Annex II, its export is subject to the notification procedure and the controls set out in the Waste Shipment Regulation.

For waste listed in Annex II, the specific requirements will depend on the waste category and country of destination. The specific requirements for each country are listed in:

- Council Regulation (EC) No. 1420/1999 (see **Reference 5**) (for prohibitions)
- Commission Regulation (EC) No. 1547/1999 (see **Reference 6**) (for systems of control).

The competent authority may be consulted in cases of uncertainty. However, Box 1 lists those entries most likely to be relevant.

Each listed country is able to prohibit the import of a particular waste or request that a variety of controls apply. These controls range from normal commercial controls, amber controls, red controls to Article 15 controls. With regard to shipments to the new EU Member States (see **Reference 7**).

References

1. Council Regulation (EEC) No. 259/93 (Waste Shipment Regulation)
http://www.europa.eu.int/comm/environment/waste/shipments/wsr_consolidated.pdf
2. Directive 2002/96/EC on waste electrical and electronic equipment (WEEE Directive)
http://europa.eu.int/comm/environment/waste/weee_index.htm
3. EU Member States
http://europa.eu/abc/european_countries/index_en.htm
4. OECD countries and non-OECD countries
http://www.oecd.org/countrieslist/0,3025,en_33873108_33844430_1_1_1_1_1,00.html
5. Council Regulation (EC) No. 1420/1999
http://europa.eu.int/eur-lex/en/consleg/main/1999/en_1999R1420_index.html
6. Commission Regulation (EC) No. 1547/1999
http://europa.eu.int/eur-lex/en/consleg/main/1999/en_1999R1547_index.html
7. Shipments to accession countries
http://www.europa.eu.int/comm/environment/waste/shipments/oecd_info.pdf