



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate B - Circular Economy & Green Growth
ENV.B.3 - Waste Management & Secondary Materials

Brussels 21.09.17
ENV B.3 MB/hk Ares(2017)4617240

Ms Sara Rodriguez Martinez LL.M.
President EuroVAPrint

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Subject: Your request for clarification on producers of remanufactured products and their obligations under Directive 2012/19/EU on waste electrical and electronic equipment (WEEE Directive).

Dear Ms Rodriguez Martinez,

Thank you for your e-mail asking for clarification in relation to remanufactured products and in particular whether remanufactured/refilled cartridges are new products put in the EU Market or not and the obligations of producers of such products.

As mentioned during the meeting we had at our premises on 28 June 2017, the BLUE GUIDE¹ on the implementation of EU product rules (2016) provides some guidance on this issue.

In particular, please note the following references:

- In paragraph 1.4 of the BLUE GUIDE is stated that "*A producer is either a manufacturer of a finished product or a component part of a finished product, producer of any raw material, or any person who presents himself as a manufacturer (for example by affixing a trademark).*"
- In paragraph 2.1. of the BLUE GUIDE is stated that "*In any case, a modified product sold under the name or trademark of a natural or legal person different from the original manufacturer, should be considered as new and subject to Union harmonisation legislation. The person who carries out important changes to the product carries the responsibility for verifying whether or not it should be considered as a new product in relation to the relevant Union harmonisation legislation. If the product is to be considered as new, this person becomes the manufacturer with the corresponding obligations. Furthermore, in the case the conclusion is that it is a new product, the product has to undergo a full conformity assessment before it is made*

¹ <http://ec.europa.eu/DocsRoom/documents/18027/>

available on the market. However, the technical documentation has to be updated in as much as the modification has an impact on the requirements of the applicable legislation. It is not necessary to repeat tests and produce new documentation in relation to aspects not impacted by the modification, as long as the manufacturer has copies (or access to copies) of the original test reports for the unchanged aspects. It is up to the natural or legal person who carries out changes or has changes carried out to the product to demonstrate that not all elements of the technical documentation need to be updated. Products which have been repaired or exchanged (for example following a defect), without changing the original performance, purpose or type, are not to be considered as new products according to Union harmonisation legislation. Thus, such products do not need to undergo conformity assessment again, whether or not the original product was placed on the market before or after the legislation entered into force. This applies even if the product has been temporarily exported to a third country for the repair operations. Such repair operations are often carried out by replacing a defective or worn item by a spare part, which is either identical, or at least similar, to the original part (for example modifications may have taken place due to technical progress, or discontinued production of the old part), by exchanging cards, components, sub-assemblies or even entire identical units. If the original performance of a product is modified (within the intended use, range of performance and maintenance originally conceived at the design stage) because the spare-parts used for its repair perform better due to technical progress, this product is not to be considered as new according to Union harmonisation legislation. Thus, maintenance operations are basically excluded from the scope of the Union harmonisation legislation. However, at the design stage of the product the intended use and maintenance must be taken into account.

- In paragraph 3.1. of the BLUE GUIDE is stated that "The manufacturer is any natural or legal person who is responsible for designing or manufacturing a product and places it on the market under his own name or trademark . The definition contains two cumulative conditions: the person has to manufacture (or have a product manufactured) and to market the product under his own name or trademark. So, if the product is marketed under another person's name or trademark, this person will be considered as the manufacturer. The responsibilities of the manufacturer apply also to any natural or legal person who assembles, packs, processes or labels ready-made products and places them on the market under his own name or trademark. Further, the responsibility of the manufacturer is placed on any person who changes the intended use of a product in such a way that different essential or other legal requirements will become applicable, or substantially modifies or rebuilds a product (thus creating a new product), with a view to placing it on the market or for putting it into service, in those cases where the Union harmonisation legislation applicable to the product includes putting into service in its scope

...

Finally, if an importer or distributor modifies a product to the extent that the compliance with the applicable requirements may be affected or supplies it under his name or trademark, then he is to be considered the manufacturer and must undertake all the obligations incumbent on the manufacturer (116). Accordingly, he must ensure that the product complies with the applicable Union harmonisation legislation and that the appropriate conformity assessment procedure has been carried out".

On this basis, when remanufacturers of printer cartridges put on the market refilled/remanufactured cartridges under their own trademark, and these cartridges meet the definition of electrical and electronic equipment (EEE) set out in Article 3(1)(a) of the WEEE Directive, then these remanufactures should be considered as producers of EEE and should have the same obligations as all the other producers of EEE, including registration, reporting, financing the take-back of waste from the EEE they place on the market when this comes to the end of its life.

Please note that all our remarks only reflect the opinion of the Commission services and are not legally binding. A binding legal interpretation of EU legislation can only be provided by the Court of Justice of the European Union. The above remarks are without prejudice to the position the Commission might take should the issue arise in a procedure before the Court of Justice.

Yours sincerely,



Sarah Nelen
Head of Unit

c.c.: B. Lorz, M. Banti