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# Legal Bulletin



## Environmental Law

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1. Transposition of Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

### Rules on waste electrical and electronic equipment. Novelties

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Government Emergency Ordinance No. 5/2015 on waste electrical and electronic equipment (“**GEO No. 5/2015**”), transposing Directive 2012/19/EU on waste electrical and electronic equipment<sup>1</sup> in the domestic law, was published in the Official Journal of Romania, Part I, No. 253 of 16 April 2015. The enactment came into effect on 26 April 2015, except for the provisions regarding the producers’ obligation to register in the national register, which shall enter into force within 120 days following publication.

GEO No. 5/2015 repeals Government Decision No. 1037/2010 on waste electrical and electronic equipment<sup>2</sup>, Order No. 2.264/2011<sup>3</sup> of the Minister of Environment and Forests and Order No. 901/S.B./2005<sup>4</sup> of the Minister of Environment and Water Management, and updates the domestic regulation by harmonising it with the EU rules.

GEO No. 5/2015 lays down a series of measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste electrical

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1 Published in the Official Journal of the EU, L197/38 of 24 July 2012.

2 Government Decision No. 1037/2010 on waste electrical and electronic equipment, published in the Official Journal of Romania, Part I, No. 728 of 2 November 2010.

3 Order No. 2264/2011 of the Minister of Environment and Forests, approving the methodology for calculating the annual rate of separate collection of waste electrical and electronic equipment, published in the Official Journal of Romania, Part I, No. 715 of 11 October 2011.

4 Order No. 901/S.B./2005 of the Minister of Environment and Water Management approving specific measures for the collection of waste electrical and electronic equipment presenting contamination risks to the safety and health of the personnel from the collection points, published in the Official Journal of Romania, Part I, No. 910 of 12 October 2005.

and electronic equipment (“WEEE”), by reducing overall impacts of resource use and improving the efficiency of such use.

Electrical and electronic equipment (“EEE”) means, the same as in the context of the old regulation, 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 1 000 volts for alternating current and 1 500 volts for direct current.

One of the novelties of the new regulation consists in reducing the scope of the rules on waste electrical and electronic equipment, insofar as new categories are added to the 2 types of equipment excepted so far<sup>5</sup>:

- from 26 April 2015, the provisions of GEO No. 5/2015 shall not apply to filament bulbs;
- from 15 August 2018, the provisions of GEO No. 5/2015 shall not apply *inter alia* to:
  - large-scale stationary industrial tools;
  - large-scale fixed installations, except any equipment which is not specifically designed and installed as part of those installations;
  - means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved;
  - non-road mobile machinery made available exclusively for professional use;
  - equipment specifically designed solely for the purposes of research and development that is only made available on a business-to-business basis;
  - medical devices.

Another novelty brought by the new regulation is the definition of the concept of “producer” designating any natural or legal person who, irrespective of the selling technique used, including distance communication, meets the following requirements:

- is established in Romania and (i) manufactures EEE under his own name or trademark, or has EEE designed or manufactured and markets it under his name or trademark within the territory of Romania; (ii) resells within the territory of Romania, under his own name or trademark, equipment produced by other suppliers, a reseller not being regarded as the ‘producer’ if the brand of the producer appears on the equipment; (iii) places on the domestic market, on a professional basis, EEE from a third country or from another Member State of the European Union; or

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<sup>5</sup> According to the old regulation, the equipment required for the protection of essential national interests of security and 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 of the WEEE legislation, which can fulfil its function only if it is part of that equipment, were excepted.

- is established in a Member State or a third country and (iv) sells EEE by means of distance communication directly to private households or to users other than private households in Romania.

Any person providing financing under or pursuant to any finance agreement shall not be deemed to be a 'producer' unless he also acts as a producer within the meaning of points 1 to 2 above.

In the context of the new regulation, any producer established in another Member State of the European Union may sell EEE in Romania, by one of the means indicated at point 1 above, by appointing an authorised representative with its headquarters in Romania, who becomes responsible for fulfilling the obligations of that producer. Also, any producer established on the territory of Romania and selling EEE by means of distance communication directly to private households or users other than private households in Romania, in order to sell EEE to another Member State, has the obligation to appoint an authorised representative in that Member State, who shall be responsible for fulfilling the obligations of that producer, according to the provisions of Directive 2012/19/EU, on the territory of that Member State.

Also, with regard to definitions, for *WEEE from private households*, the novelty is that waste from EEE likely to be used by both private households and users other than private households shall be considered to be WEEE from private households.

#### 1. General obligations imposed on producers and distributors by GEO No. 5/2015

In order to place EEE on the market, producers have the obligation to register in the national register of producers, prepared by the National Agency for Environmental Protection (the "**National Agency for Environmental Protection**"), a register which also includes producers providing EEE by means of distance communication techniques. Following registration, the producers receive a registration number to be communicated to all networks whereby they market electrical and electronic equipments (this provision becomes effective within 120 days following the publication of GEO No. 5/2012).

Correlatively, distributors (*i.e.* any natural or legal persons of the supply chain, who make EEE available on the market, and who may, at the same time, be producers as well) shall make sure that they buy EEE only from registered producers, otherwise being liable to pay fines.

GEO No. 5/2015 provides that EEE producers and/or distributors must provide the necessary information for a correct management of WEEE, *i.e.*:

- producers and distributors must show purchasers, at the time of sale of EEE, the costs of collection, treatment and disposal in an environmentally sound way, by distinctly recording such costs;
- producers have the obligation to make sure that users of EEE in private households are given the necessary information, in the instructions for use, about: how to collect and dispose of the WEEE, the collecting systems available to them, their

role in contributing to re-use, recycling and other forms of recovery of WEEE, the potential hazardous effects, the meaning of the symbol marked on the EEE;

- producers must inform the specialised re-use units and the treatment and recovery facilities on the re-use and treatment, for each new type of EEE placed for the first time on the EU market, within one year after the equipment is placed on the market.

## 2. New developments on the distinct collection and capitalisation of WEEE

GEO No. 5/2015 pays particular attention to the regulation of the WEEE collection system. Thus, several categories of undertakings in charge with the collection activity have been established:

- public collection services;
- collection points - they must act on the basis of an agreement with the producers / the collective schemes or the undertakings which perform treatment operations on behalf of the former; unless this agreement is executed within 120 days as of the publication of GEO No. 5/2015, the applicable penalty consists in the cessation of the WEEE collection activity;
- distributors, which have the obligation to take over the WEEE under “one-to-one” exchange programs; the novelty is that, if distributors have retail shops with sales areas relating to EEE of at least 400 m<sup>2</sup>, they must collect very small WEEE free of charge, even if the end users do not buy EEE of an equivalent type.
- producers organising and operating individual or collective schemes, which have the obligation to take over all the WEEE resulting from the EEE placed on the market.

A new provision introduced by GEO No. 5/2015 in relation to WEEE collection is to set environmental objectives as regards WEEE collection. Thus, the annual collection rates which must be met by the producers are as follows:

- by 31 December 2015, the obligation to organise the collection of WEEE from private households so as to reach an average national rate of separate collection of at least 4 kg/inhabitant/year;
- as of 1 January 2016, the obligation to reach minimum collection rates (calculated on the basis of the total weight of WEEE collected in such year, expressed as a percentage of the average weight of the aggregate EEE placed on the market in the three preceding years): for year 2016 - over 40%; for the period 2017-2020 - 45% and as of year 2021 - 65%); fines are applied if the minimum collection rate is not reached.

As regards collection operations, GEO No. 5/2015 provides for the obligation to submit information to the National Agency for Environmental Protection on the separately collected WEEE. The rules on such reporting are to be established by the secondary laws which will enforce the provisions of GEO No. 5/2015.

In relation to WEEE recovery, GEO No. 5/2015 provides that producers have several obligations which may be fulfilled individually or collectively, such as:

- to set up systems to provide for the recovery of WEEE using best available techniques; recovery standards are to be established by secondary laws;
- to meet the minimum recovery targets for all the separately collected WEEE, otherwise being subject to fines; the minimum targets are detailed in appendix No. 9 to GEO No. 5/2015;
- to hold and keep records on WEEE information to calculate the required recovery targets.

As regards the EEE which are brought in Romania for own consumption, GEO No. 5/2015 provides that the persons manufacturing or importing from a third country/another EU Member State EEE which are not for sale or for which they are not the producers for the purpose of the definition provided in GEO No. 5/2015, they have the obligation to keep records on EEE and to entrust the WEEE originating from them only to the authorised operators for WEEE treatment and collection. Also, individuals or legal entities holding WEEE, including those resulting from EEE imported for own use, have the obligation to return the WEEE to the collection systems provided under the new regulation.

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## Editors

**Environmental Law and Permitting** are two of the niche practice areas of Romanian and EU law in which Țuca Zbârcea & Asociații's attorneys have gained unique expertise by handling some of the most complex projects undertaken so far in Romania in the mining sector, energy and oil & gas, as well as in the steel industry. Our services cover all procedural steps to be undertaken before the competent authorities (city halls, local environmental authorities, Ministry of Environment, Water and Forests, etc.) in relation to complex procedures such as IPPC, BAT, environmental impact assessment procedures, issuance of city planning certificates, public debates and environmental organisations, cross border environmental procedures, etc. Also, our services include advice on the environmental aspects of projects such as mergers and acquisitions, partnerships, long term exploitation contracts etc. and drafting and negotiating environmental agreements for the separation of environmental liabilities, both historical and forthcoming.



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