

**Unofficial note of an informal meeting of the Technical Adaptation Committee  
3 March 2004**

The Commission had called the meeting to discuss the definition of “producer” and “put on the market” in the light of advice from its own Legal Services. The Commission Legal Services (CLS) had advised that “producer” and “imports” can only apply in relation to the act of placing a product on the EU market for the first time. If member States required the producer identification marking (under Article 11.2 of the Directive) for imported goods to identify the producer in the destination member State rather than the member State where it was manufactured or first entered the EU, this would be against the EC Treaty on free movement of goods in the Single Market.

Member States were of the view that this could render the WEEE Directive impossible to implement as they needed to identify a producer within their national borders in order to allocate producer responsibility obligations. The Commission said that it was open to suggestions on how to address this problem.

The UK suggested that the producer responsibility obligation could fall on the party who puts the EEE product on the market within the member State's jurisdiction. This would get away from the terminology, "producer", "imports", seemingly causing the problems. However, this would depend on the extent to which member States wanted to identify producers from WEEE arriving in the waste stream. There was support from other member States for this suggestion.

There was some discussion on how to apply the WEEE Directive to distance sellers. The UK asked whether it might be possible for member States to require distance sellers based in their countries to register and to declare the amount of EEE they had placed on the national and other EU markets, they could then pay the WEEE obligation for the total EU sales in the country in which they were registered. If other member States were to do the same, this would minimise free riders, even though the amounts may not be exactly the same from member State to member State. Another member State suggested a similar system with member States sharing information and that if a distance seller was reported to be failing to discharge their obligations by a country they were not based in, their “home” member State may be able to prosecute, provided that certain legal problems could be overcome. Many member States reported that although they acknowledged that distance selling could increase in the future, they were not aware of it being a large market at present.

The Commission invited member States to give written comments and said that it would seek further advice from its legal services. The UK and others emphasised that member States are currently working to implement the Directive and need a quick resolution.