

# Authorised representatives for electrical and electronic equipment

With the Amendment to the Austrian Waste Electrical and Electronic Equipment Ordinance of 2014 ("Elektroaltgeräteverordnung 2014", abbr. "EAG-VO 2014") foreign producers have the opportunity, and foreign traders are placed under the obligation, to appoint an authorised representative fulfilling their obligations.

## Description of the subject matter

With the Amendment to the Austrian Waste Management Act 2002 ("Abfallwirtschaftsgesetz 2002", abbr. "AWG 2002"), Federal Law Gazette I No. 103/2013, and the Amendment to the EAG-VO, Federal Law Gazette II No. 193/2014, Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment was implemented.

By means of these two amendments the term "producer" as defined in the AWG 2002 was widened and the opportunity, respectively the obligation, to appoint an authorised representative for foreign producers or distance traders covered by the wider definition of the term "producer" was provided for in the EAG-VO.

## Wider definition of the term "producer"

Since 14 February 2014 not only persons covered by the former definition have been considered producers but also everybody who, regardless of the selling technique, including distance selling,

- sells electrical and electronic equipment to persons not being final consumers in Austria, is established in another Member State of the European Union and, in line with the EAG-VO, appointed an authorised representative fulfilling his or her obligations under the EAG-VO (= **foreign producer as defined in section 13a para. 1 (4) of the AWG 2002**)

or

- sells electrical or electronic equipment in Austria directly to final consumers by means of distance communication and is established in another Member State or in a country outside the European Union (= **foreign distance trader as defined in section 13a para. 1(5) of the AWG 2002**).

## Authorised representative

Since the entry-into-force of the Amendment to the EAG-VO as of 1 July 2014 **foreign producers** according to section 13a para. 1(4) of the AWG 2002 **have the opportunity** to appoint an authorised representative who is responsible for fulfilling their obligations under the EAG-VO (section 21a EAG-VO). By contrast, **foreign distance traders** (as defined in section 13a para. 1(5) of the AWG 2002) **are obligated** to appoint an authorised representative responsible for fulfilling their obligations under the EAG-VO (section 21b EAG-VO).

A person can act as an authorised representative only if specific conditions are met (see 'Requirements'). An authorised representative takes over all obligations of the foreign producer or distance trader under AWG 2002 and the EAG-VO for the electrical and electronic equipment this foreign producer or distance trader sells to persons other than final consumers or to final consumers in Austria. In fulfilling his or her tasks the authorised

representative is subject to several obligations. For example, he or she has to register in the register provided for in section 22 para. 1 of the AWG 2002 and must supply certain data to this register. The authority (BMLFUW) marks the person as authorised representative in the register. The authorised representative has to report the amounts of electrical and electronic equipment placed on the market by the person who granted him or her the authorisation as well as the amounts of electrical and electronic equipment that have been prepared for re-use to the register, as provided for in section 22 para. 1 of the AWG 2002.

Section 21c EAG-VO puts producers as defined in section 13a para. 1(3) of the AWG 2002 that export electrical and electronic equipment to other Member States of the European Union for the purpose of sale to final consumers under the obligation to appoint an authorised representative in the relevant Member State as the person who is responsible for fulfilling the obligations of the producer in the Member State where the final consumer of the equipment is established.

### **Enterprises concerned**

Foreign producers as defined in section 13a para. 1(4) of the AWG 2002 and foreign distance traders as defined in section 13a para. 1(5) of the AWG 2002 as well as Austrian distance traders.

### **Requirements**

For the registration as authorised representative the following requirements must be met (compare section 21a para. 1 and section 21b para. 2 of the EAG-VO):

1. The authorised representative is a natural person or a legal entity which is established in Austria;
2. A mailing address in Austria is available;
3. The person is responsible for compliance with the Austrian administrative provisions (section 9 of the Administrative Penalties Act); and
4. The appointment is granted by way of a certified power of attorney in the German or English language which demonstrates the extent of the authorisation, in particular the relevant collection and treatment category, the express approval on the part of the authorised representative to fulfil the obligations of the producer appointing him or her, as well as the contractual guarantee that the authorised representative is granted the right to conclude contracts placing the producer under an obligation and that all documents and means he or she may need in the performance of his/her tasks will be provided.

### **Deadlines**

There are no specific time limits. However, the appointment of an authorised representative as well as any changes to or the cancelling of an authorisation can become effective only at the end of a calendar quarter (compare section 21a para. 4 and section 21b para. 1 of the EAG-VO).

### **Competent authority**

Federal Ministry of Agriculture, Forestry, Environment and Water Management (BMLFUW)

### **Procedure**

Persons intending to act as authorised representatives for a foreign producer or distance trader have to present a power of attorney (meeting the above-mentioned requirements) to the BMLFUW (Directorate V/2, Stubenbastei 5, 1010 Vienna, or [abt.52@bmlfuw.gv.at](mailto:abt.52@bmlfuw.gv.at)).

The power of attorney is checked there and if the result is positive (which means that all conditions are fulfilled) and the authorised representative registered in the Register of Industrial Plant and Personal Master Data according to section 22 AWG 2002 (eRAS), the BMLFUW marks the person as authorised representative in eRAS. After that, the BMLFUW communicates the master data of foreign producers or distance traders to the Austrian Environment Agency "Umweltbundesamt GmbH" (UBA) which will then register them in eRAS using the supplied data.

Subsequently, UBA provides the authorised representative with so-called access data for secondary users giving them access to the data of the foreign producer or distance trader as secondary users. If the foreign producer or distance trader wishes to maintain the master data himself, he or she can at any time ask for the necessary access data at the EDM helpdesk (+43 (1) 31304/8000 bzw. [edm-helpdesk@umweltbundesamt.at](mailto:edm-helpdesk@umweltbundesamt.at)).

If the power of attorney proves not to comply with the requirements, the BMLFUW does not mark the person as authorised representative in the register according to section 22 AWG 2002 and, if requested, has to render a ruling on the refusal (compare section 21a para. 3 last sentence and section 21b para. 4 last sentence of the EAG-VO).

#### **Documents required**

A power of attorney meeting the provisions set out in section 21a para. 1(4) or section 21b para. 2(4), respectively, of the EAG-VO (see Requirements).

#### **Legal basis**

- Section 13a of the Austrian Waste Management Act of 2002 (Abfallwirtschaftsgesetz 2002 - AWG)
- Sections 21a, 21b and 21c of the Ordinance of the Federal Minister of Agriculture and Forestry, Environment and Water Management on Waste Prevention, Collection and Treatment of Waste Electrical and Electronic Equipment ("Elektroaltgeräte-Verordnung" - "EAG-VO"),