

# Amendment of the Electrical and Electronic Equipment Act



Several measures have the key goal of **increasing the volumes of waste equipment collected**. Both the **retail and online trade** as well as producers of **equipment** are affected by the changes.

On 27 May 2021 the German government published the new Electrical and Electronic Equipment Act ("Erstes Gesetz zur Änderung des Elektro- und Elektronikgerätegesetzes"), which will enter into effect on 1 January 2022. The amendment aims to improve the existing nationwide legislation in order to achieve the following objectives in particular:

- Improve the quantity and quality in terms of the collection of waste electrical and electronic equipment,
- Strengthen the preparation for the reuse of waste equipment and
- Improve enforcement as regards third country free riders.

The Amended Electrical and Electronic Equipment Act includes changes for all market participants. The sum total of several individual measures aims to lead to an improvement in the collection of waste equipment in Germany, also through the provision of improved information to consumers. An additional Regulation on the treatment of waste electrical and electronic equipment, which has been included in the legislative process at the same time, is designed to strengthen the recycling of waste equipment. In your role as a **producer and/or distributor of electrical and electronic equipment, among others**, the following key points of the Amended Electrical and Electronic Equipment Act are relevant:

## **Broadening of the definition of putting on the market** (Section 3 (8), *ElektroG*)

In addition to the existing regulation, in the future, the Act will also consider the initial reintroduction of a piece of electrical or electronic equipment on the market which had been exported after its initial introduction to the market to constitute putting on the market.

## **Tightening of the liability of online marketplaces and fulfilment service providers**

On the basis of the **definitions** (Section 3, *ElektroG*, numbers 11 a-c), new participants are defined as distributors:

- **Electronic marketplace** (no. 11 a):  
"a website or any other means by which information is made available on the internet which enables producers or distributors who are not the operators of the marketplace to offer or make available electrical or electronic equipment in their own name within the scope of validity of this Act;"
- **Operator of an electronic marketplace** (no. 11 b):  
"any natural person or legal entity or partnership that maintains an electronic marketplace and enables third parties to offer or provide electrical or electronic equipment on such a marketplace within the scope of validity of this Act."
- **Fulfilment service provider** (no. 11 c):  
"any natural person or legal entity or partnership that, in the course of a business, provides at least two of the following services within the scope of validity of this Act: The warehousing, packaging, addressing or shipping of electrical or electronic equipment in which it has no ownership interest; postal, parcel delivery or other freight service providers are not considered fulfilment services."

In connection with these new definitions, the **prohibition on the putting on the market of equipment from non-registered producers** (Section 6 (2) sent. 2, *ElektroG*) is extended such that the operators of an electronic marketplace may not enable the offering or provision of electrical or electronic equipment, and that fulfilment service providers may not provide any of the activities referred to in no. 11 c if the producers of such equipment or their authorised representatives are not, or not properly, registered. This regulation comes into force on 1 January 2023.

### **Broadening of the take-back obligations of distributors** (Section 17 (1) *ElektroG*)

From 1 July 2022 onwards, distributors of foodstuffs with a total retail area of at least 800 square metres who offer and make electrical and electronic equipment available on the market either several times in a calendar year or on a permanent basis will also be obliged to take back waste equipment. The general take-back obligation (referred to as 0:1 take-back) applies to waste equipment which is no bigger than 25 centimetres in any external dimension. In this context, the take-back may not be linked to the purchase of a piece of electrical or electronic equipment, and is limited to three pieces of waste equipment per equipment type. Bigger pieces of waste equipment must only be taken back if the end user buys a new piece of electrical or electronic equipment of the same type that essentially has the same functions (referred to as 1:1 take-back).

As part of the 1:1 take-back scheme, in the future, distributors who deliver an appliance to a private household will be obliged to take back certain waste equipment (e.g. refrigerators, monitors, washing machines) from the private end-user free of charge. By the conclusion of the purchase agreement, the distributor is required to notify the customer about the possibility of the free return in the shop and the free collection in the private household, and to ask the customer about his or her intention to return a piece of waste equipment when the new equipment is delivered.

### **Broadening and specification of the information obligations of distributors/producers** (Section 18 (3 & 4), Section 19a, *ElektroG*)

In the future, distributors who are obliged to take back waste equipment must inform private households of their obligation to take back waste equipment free of charge and of the obligation of the end user to remove used batteries and accumulators. Producers are also required to inform private households of the aforementioned points from the moment that they offer electrical or electronic equipment for sale.

In terms of the form of the information obligations described, in the future, specifications will also apply: the information must be provided by means of clearly visible and legible written or pictorial signs that are placed in the immediate field of vision of the main customer flow. Producers and/or distributors which offer electrical or electronic equipment with the use of telecommunication systems will be required to publish the information in the presentation media that they use or to include it in writing with the delivery of the goods.

### **Extensive new obligations for producers of B2B equipment**

#### **Obligation to create a take-back concept at the time of registration** (Section 7 (1) sent. 3 in connection with Section 7a, *ElektroG*)

For B2B equipment, in the future, a producer will be obliged to submit a take-back concept at the time of registration, showing how they will implement their take-back obligation. The take-back system must include details of the possibilities for the return and the ways in which end-users can access them. A transitional period applies to producers which are registered before 1 January 2022: they must submit their take-back concept to the responsible authority by the end of 30 June 2022.

#### **Take-back and information obligations** (Sections 19 and 19a, *ElektroG*)

Each producer and/or their authorised representative is required to provide a reasonable possibility for the return of waste equipment from users other than private households. In the future, it will no longer be possible to transfer the responsibility for the disposal of the waste equipment to the end user through divergent agreements. However, the producer and/or their authorised representatives will continue to be permitted to commission third parties to set up the return facilities.

The costs of the disposal of the waste equipment shall be covered by the producer and/or the authorised representative (exception for what is referred to as historical waste equipment). The producer / authorised representative and the purchaser or end-user who is not a private household can agree on different arrangements as regards the bearing of the costs.

There is no obligation for end-users to surrender waste equipment to the producer. If end-users do not return waste equipment to the producer and/or authorised representative who is obliged to take it back, they are obliged to manage the waste equipment properly in the place of the producer and/or authorised representative.

In future, producers of B2B equipment will be obliged to provide information to commercial end-users, in particular on the options that they have created for the return and disposal of waste equipment.

#### **Labelling obligation for all electrical and electronic equipment** (Section 9 (2) sent. 1, *ElektroG*)

Until now, producers have only been required to label electrical and electronic equipment which is used in private households with the crossed-out dustbin symbol. In the future, however, B2B equipment must also be provided with the corresponding labelling. A transitional arrangement applies regarding the labelling obligation for equipment which is placed on the market by the end of 31 December 2022: a subsequent labelling of stock goods which have already been manufactured is not necessary up to this point in time.

**Please do not hesitate to contact us for further information about the amendment of the Electrical and Electronic Equipment Act and your possible new obligations.**

#### **Contact us:**

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