

Guidance for Authorised representatives

How to act in accordance to Swedish legislation

Version A

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Contents

1	INTRODUCTION	2
1.1	Authorised representative	3
1.2	Producer definition	3
2	THE AUTHORISED REPRESENTATIVE	4
2.1	Voluntary and Mandatory appointment of an Authorised Representative	4
2.1.1	Voluntary appointment of an Authorised Representative	4
2.1.2	Mandatory appointment of an Authorised Representative	4
2.2	Authorised Representative – the national representative of the producer	5
2.3	How to appoint an Authorised Representative?	6
2.4	Duties and responsibilities of an appointed Authorised Representative	6
2.5	What happens if an Authorised Representative mandate is terminated?	6
	ANNEX 1 - SAMPLE OF A WRITTEN MANDATE	8

1 Introduction

This guidance is intended for stakeholders engaged with the fulfilment of the obligations in the WEEE directive and the Swedish ordinance (2014:1075) on producer responsibility for electrical and electronic equipment.

In typical commercial situations when electrical and electronic equipment ('EEE') moves from one member state ('MS') to Sweden, the Swedish importer, as per the producer definition in the recast Directive 2012/19/EU on waste electrical and electronic equipment ('WEEE2'), is the "producer" and will fulfill all the responsibilities of a producer, including registering, reporting and provision of financial guarantees etc. (see Figure 1 below).

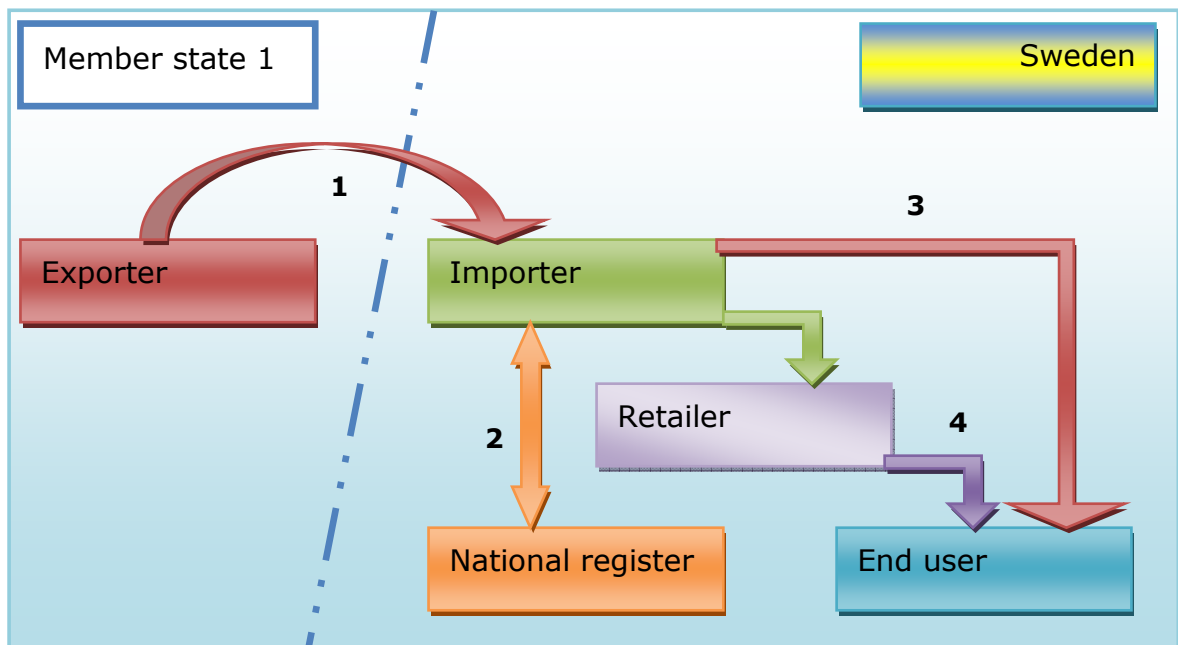


Figure 1: Exporter in MS1 sells EEE to importer in Sweden (1). Normal situation where importer (Section 9.3 in the Swedish ordinance) in Sweden assumes producer obligation and registers with and reports to the national register in Sweden (2) all amounts of EEE placed on the market in Sweden (3 and 4).

However there are some situations when the exporter wishes to assume all the obligations of the producer in the other MS. Previously in this latter case, under the original WEEE Directive 2002/96/EU on waste electrical and electronic equipment ('WEEE1'), there were many different regulations across the EU that had to be fulfilled by the exporter which caused extra financial or administrative burdens for these companies. WEEE2 has introduced the concept of an Authorised Representative ('AR') by way of exception to the norm as outlined in paragraph 1 above in order to reduce these burdens (see Figure 2 below).

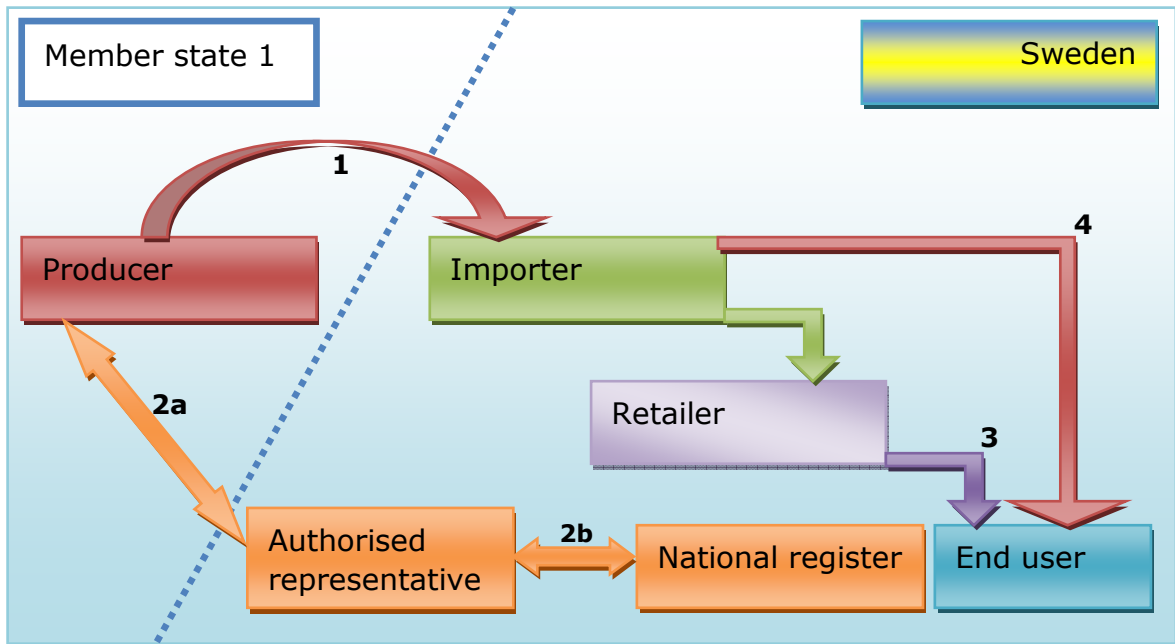


Figure 2: Exporter in MS1 sells EEE to importer in Sweden (1). Under Section 9.3 in the Swedish ordinance the importer in Sweden would normally be the producer and would have to register and report to the national register in Sweden (Fig 1). Section 30 in the Swedish ordinance allows the exporter in MS1, by way of exception to normal rules to assume the obligations of a producer in Sweden, and he does so by appointing an AR in Sweden (2a.). The AR in Sweden registers the exporter established in MS1 as a producer in Sweden (2b), reports the quantities placed on the market in Sweden by the “producer” and fulfills all other producer responsibilities in Sweden (2b) on his behalf. Under these circumstances the importer in Sweden is under no obligation to register or to report the amounts of EEE (from exporter in MS1) placed on the market in Sweden (3 and 4).

1.1 Authorised representative

References to the AR can be found in preamble No. 8, Articles 16, 17 and Annex X WEEE2 as well as section 29-31 in Swedish ordinance (2014:1075) on producer responsibility for electrical and electronic equipment (“the Swedish ordinance”).

1.2 Producer definition

The different producer types are defined under Article 3(1)(f) in the directive and in section 9 in the Swedish ordinance.

2 The Authorised Representative

2.1 Voluntary and Mandatory appointment of an Authorised Representative

2.1.1 Voluntary appointment of an Authorised Representative

Under sub-article 17(1) a producer, as defined in Article 3(1)(f)(i- iii), may voluntarily choose to appoint an AR in a MS where he is not established. If producers choose this option WEEE2 obliges each MS to ensure they can proceed. Section 30 in the Swedish ordinance ensures the producers this option.

From the outset it should be noted that the AR option under Article 17(1) is offered by way of exception to the general rule. The exception to appoint an AR can only apply when a “producer” (exporter) who is placing EEE on a market in another MS where he is not established wishes to assume all the obligations of a producer in that other MS (Article 17(1)) instead of the importer (Article 3(1)(f)(iii)) in that MS (see Figure 3 below). The obligation placed on a MS to allow a producer to appoint an AR applies only in cross border trading.

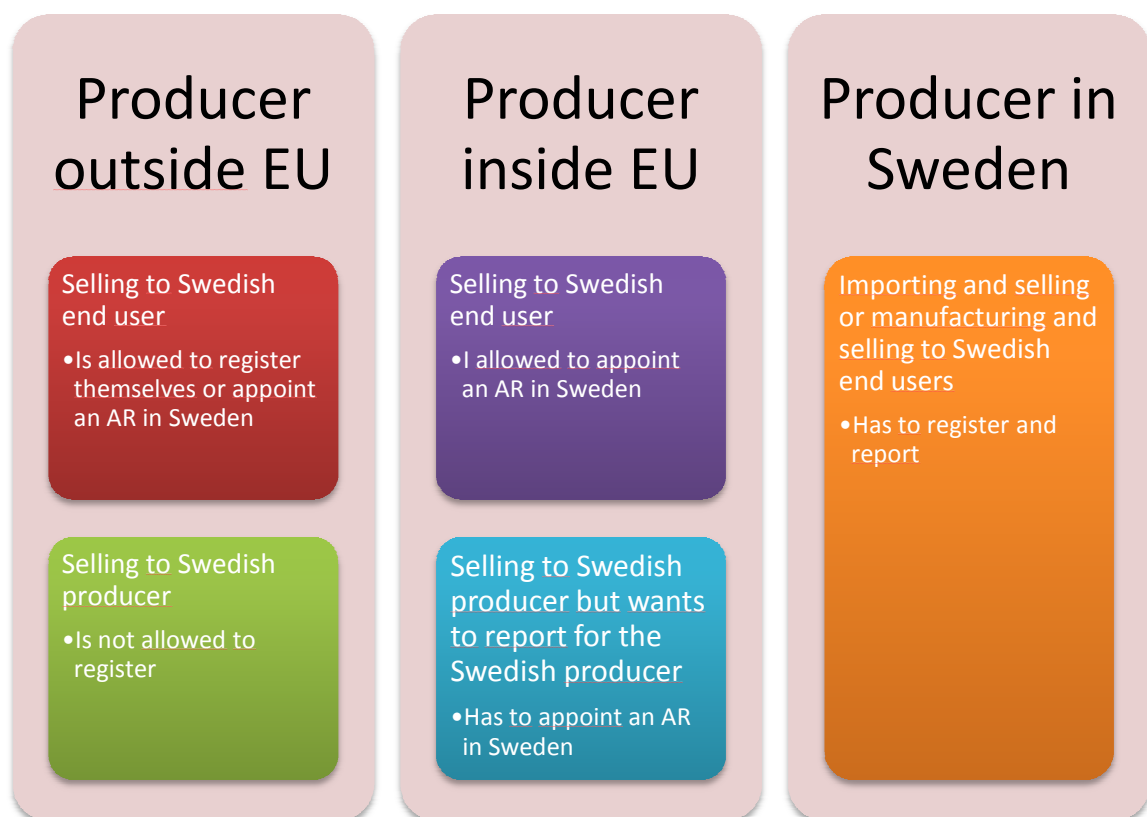


Figure 3

2.1.2 Mandatory appointment of an Authorised Representative

Under Article 17(2) in WEEE2 and section 29 in the Swedish ordinance, for a producer selling EEE to end users by means of distance communication from Sweden to another MS where they

are not established (article 3(1)(f)(iv) WEEE2, section 9.4 in the Swedish ordinance) it is mandatory, in every situation, to appoint an AR (See Figure 4 below).

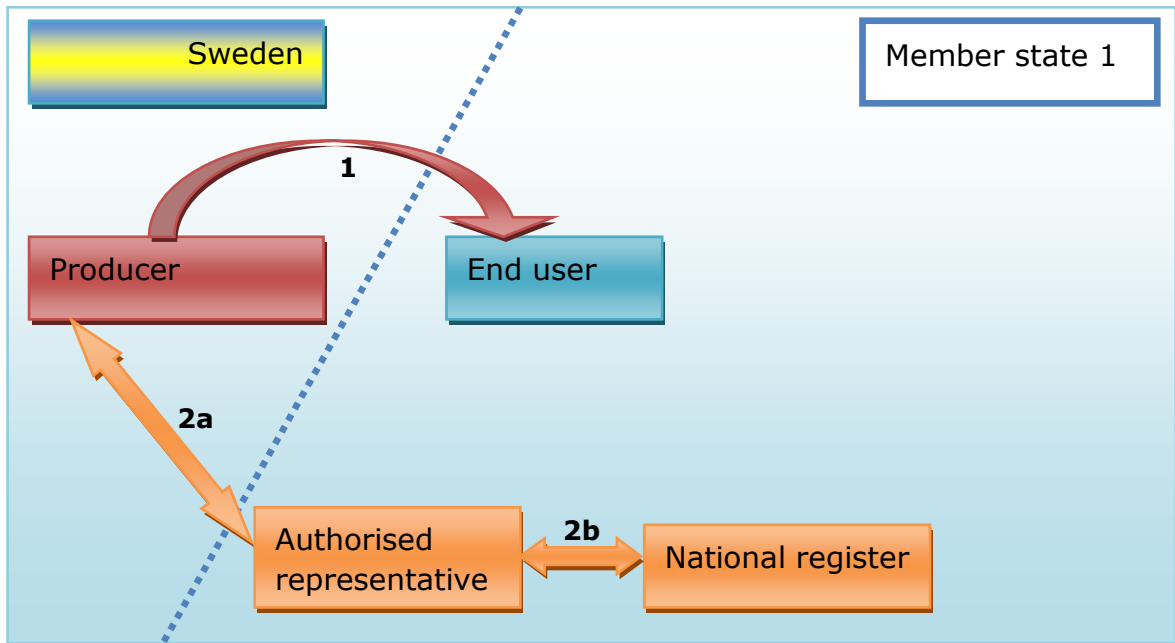


Figure 4: Producer in Sweden sells EEE directly to an end user (b2b or b2c) in MS1 by means of distance communication (1). Unless the producer in Sweden is also established in MS1 (Article 16(1) sentence 4) he must, under Section 29 in the Swedish ordinance, appoint an AR in MS1 (2a). The AR in MS1 registers the producer and reports the quantities placed on the market in MS1 by the producer and fulfills all other producer responsibilities in MS1 (2b).

For a producer selling EEE by means of distance communication from another member state or third country to Sweden it is mandatory, under article 17(2) WEEE2, to appoint an authorised Representative in Sweden.

2.2 Authorised Representative – the national representative of the producer

The AR is the national representative of the producer, established in another MS, when dealing with the national authorities in the MS where the AR is established.

An AR, once appointed by the producer and accepted by the national register, represents the producer in matters relating to, inter alia, registration, reporting and enforcement. The AR is responsible for, inter alia, the producer’s obligations as set out in Article 16(2) b) and c) to provide the information to the national registers as per Annex X Part A and B of WEEE2 (sections 32-35 and 62 in the Swedish ordinance).

An “exporter” may appoint more than one AR in a MS, but the responsibilities resting on each must be clearly defined to the national register.

2.3 How to appoint an Authorised Representative?

Appointment of an AR shall be by written mandate (Article 17(3)). Prior to registration the written mandate outlining the appointment of the AR must be submitted to the national register where the registration application is filed. An example of such a written mandate can be found in Annex 1.

Together with the written mandate mentioned above the exporter must also submit to the national register a document showing that the exporter and the importer/importers in concern have agreed on transferring the producer's responsibilities to the exporter represented by an Authorised Representative.

2.4 Duties and responsibilities of an appointed Authorised Representative

By accepting the appointment and signing the mandate the AR accepts that the AR is responsible for acting in name and on behalf of the producer (exporter) in all matters pertaining to, inter alia,

- Fulfilling of all national producer obligations
- Communication with the national register
- Provision of all relevant producer/AR information upon request to the national register
- Informing the producer about all relevant national obligations and information
- Responsibility for payment of any fees etc.
- Accepting prosecutions in the event of non-compliance.

2.5 What happens if an Authorised Representative mandate is terminated?

Looking at Figure 1, the general rule is that the importer in MS2 is the one who has legal obligations under WEEE2. Looking at Figure 2, the appointment of an AR in MS2 by the exporter in MS1 transfers the producer's obligations under WEEE2 from the importer in MS2 to the exporter in MS1 by exception to the general rule. Therefore, if an AR mandate is terminated producer responsibility must follow the general rule and fall back to the importer in MS2.

In the event that an AR's mandate is terminated the relevant national register must be informed immediately by both parties.

If a new AR has not been appointed simultaneously with the notification of the national register of the termination of the previous mandate the respective registration (Figure 2) shall be cancelled immediately. If no new AR has been appointed the exporter must also inform the importer immediately that he now has producer responsibility under WEEE2 and cannot legally place EEE on the market before fulfillment of his WEEE2 obligations.

The responsibilities which occurred during the mandate period remains with the AR until all liabilities are discharged (see Figure 4 below).

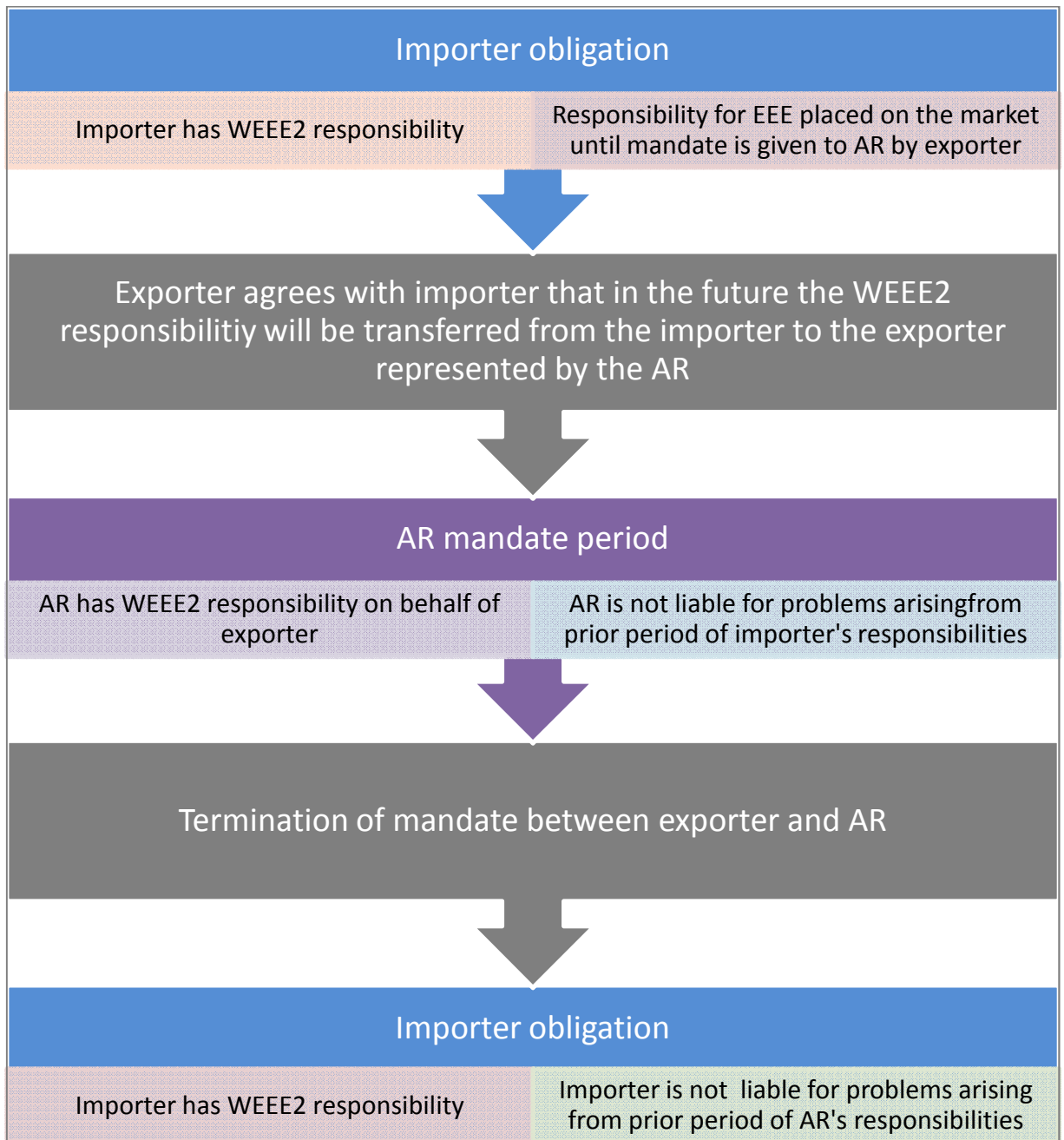


Figure 4: When responsibility moves between legal entities over the time it can be difficult to identify who has responsibility for non-compliance under WEEE2. It is suggested to keep the responsibility connected to the time of placing on the market of the EEE.

ANNEX 1 - Sample of a Written Mandate

A Ltd

New Street Newtown MS1

Hereby appoints

Mr. B/BLtd Old Street Oldtown MS2

as its authorised representative in MS2 as per the EU Directive 2012/19/EU.

This mandate is for the following categories:

Mr. B/BLtd undertakes as the authorised representative of A Ltd in MS2 to represent A Ltd in all aspects of the above Directive as transposed by the national WEEE Regulations in MS2.

This mandate, signed by both parties, commences on the date of signature if not stated otherwise and will cease once either party informs the national register of MS2 that it has been terminated.

Signature Producer Signature AR Date