



European Union Network for the Implementation  
and Enforcement of Environmental Law

# Short study on national measures to reduce freeriding

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*WEEE Art 17 project*

***Date of report: December 2023***

***Report number: 2022(IV)WG2***



Funded by the  
European Union

IMPEL is funded by a "FRAMEWORK PARTNERSHIP AGREEMENT" with European Commission DIRECTORATE-GENERAL FOR ENVIRONMENT - LIFE PROGRAMME (ENV.E.4/FPA/2022/001 – IMPEL)

### Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the European Union (EU) Member States, and of other European authorities, namely from acceding and candidate countries of the EU and European Economic Area (EEA). The association is registered in Belgium and its legal seat is in Brussels, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 8th Environment Action Programme that guide European environmental policy until 2030, the EU Action Plan: "Towards a Zero Pollution for Air, Water and Soil" on Flagship 5 and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at: [www.impel.eu](http://www.impel.eu)

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<b>Title of the report:</b> Short study on national measures to reduce freeriding	<b>Number report:</b> 2022(IV)WG2
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<b>Executive Summary</b> <p>This short study on national measures to reduce freeriding with the WEEE Art. 17 legislation was written within the IMPEL WEEE Art. 17 project. It focusses on the answers given by project members to a questionnaire. The questionnaire consists of nine questions. While the first two questions are concerning general information, the second set of two questions asks for information regarding the implementation of the WEEE Directive and national measures. The final and central set of questions focusses on enforcement against freeriders. These five questions range from the responsible institution, to enforcement procedures, to additional measures.</p> <p>While the WEEE Directive establishes a legislative framework for the Member States, it is leaving room to accommodate national measures. The study results demonstrate that there are overlapping ideas and similar measures in the national implementations, though all national laws differ from each other.</p> <p>This creates the opportunity for Member States to learn from each other's best practice examples. The study intends to shine light on a multitude of great approaches in regards of preventing WEEE EPR freeriders.</p> <p>The findings in this study highlight national measures to prevent freeriding regarding WEEE EPR. It clearly shows, that while there is a common goal we aim to achieve in enforcement, there are different ways of achieving that.</p>	
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*'UNITED IN DIVERSITY'* - EU Motto

*'What divides us pales in comparison to what unites us.'* - Edward Kennedy

*'I know there is strength in the differences between us. I know there is comfort, where we overlap.'* – Ani DiFranco

*'You can't have unity without diversity.'* – Richard Twiss

The following short study was conducted by IMPEL's WEEE Art.17 project in 2023, based on replies received from within this same group to a previously conducted field research via questionnaire. Project leadership as well as the core team who have written this short study would like to thank all participants for their contributions. Thanks to IMPEL, especially the Waste & TFS expert group, the secretariat and the financial officer for their continuous support of this project and the opportunity for us to grow and engage in the way we have been able to. Europe, December 2023

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### 1. Introduction and set out for the study

In 2019 a project concerning the implementation of Art.17 WEEE Directive and related topics was established within IMPEL. This project serves to:

- improve and simplify the enforcement of Art. 17 WEEE and prosecution of European crossborder WEEE free-riders,
- facilitate international cooperation in cross-border prosecution,
- offer a non-bureaucratic and simple way to communicate between competent authorities,
- facilitate exchanging experiences in enforcement and prosecution of cross-border WEEE freeriders and in implementation of the requirements of the WEEE Directive regarding authorised representative in the other EU member states.

A way to improve and simplify the prosecution of European cross-border WEEE free-riders and to further international cooperation in cross-border enforcement is regular exchange between the responsible colleagues in the enforcement agencies. Additionally, sharing how the WEEE Directive is implemented in each Member State increases not only a shared common knowledge base and eases international cooperation. It highlights similarities and different approaches to specific issues. This in turn allows the establishment of best practice examples more clearly.

In order to achieve the mentioned gains in knowledge, a questionnaire on national measures which go beyond Articles 16, 17 and 22 WEEE Directive was created and shared among members of the WEEE Art. 17 project. Replies were received from 20 project members. Each project member either represents a national authority or – in one case – a regional authority. Out of the twenty replies nineteen came from EU Member States, one came from an EFTA state. With replies received from 70 percent of EU Member States, the answers to this questionnaire can be considered representative. Nonetheless, the authors of this study are aware that only participation from all EU Member States and EFTA states would grant a full and holistic picture and show every nuance in detail.

The short study's sole focus is on the replies received by project members. No other primary or any secondary source was considered. There are two main reasons for this approach: On the one hand, the questionnaire was answered by colleagues working in WEEE enforcement. Therefor expertise, deep insights and a high level of knowledge were a given. On the other hand, adding excerpts from national legislation would neither provide better readability nor would it serve the purpose of the study of highlighting possible additional measures on national level significantly beyond what was already shown in this study. Any secondary sources would not be able to provide the same level of insight as the questionnaire did.

The questions posed in the questionnaire were designed to be open questions. While open questions take longer time both in answering as well as analysing them, they also provide

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much more information and a deeper level of insights than closed questions or multiple choice questions.



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### 2. WEEE Directive

The WEEE Directive addresses registration, information and reporting of producers in Article 16. Article 22 of the WEEE Directive empowers member states to establish penalties for violations of national provisions. This includes producers not registering in the member state they sell to:

#### 2.1 WEEE Directive (2012/19/EU):

##### Article 16 Registration, information and reporting:

*1. Member States shall, in accordance with paragraph 2, draw up a register of producers, including producers supplying EEE by means of distance communication. That register shall serve to monitor compliance with the requirements of this Directive. Producers supplying EEE by means of distance communication as defined in Article 3(1)(f)(iv) shall be registered in the Member State that they sell to. Where such producers are not registered in the Member State that they are selling to, they shall be registered through their authorised representatives as referred to in Article 17(2).*

##### Article 22 Penalties:

*The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 14 February 2014 at the latest and shall notify it without delay of any subsequent amendment affecting them.*

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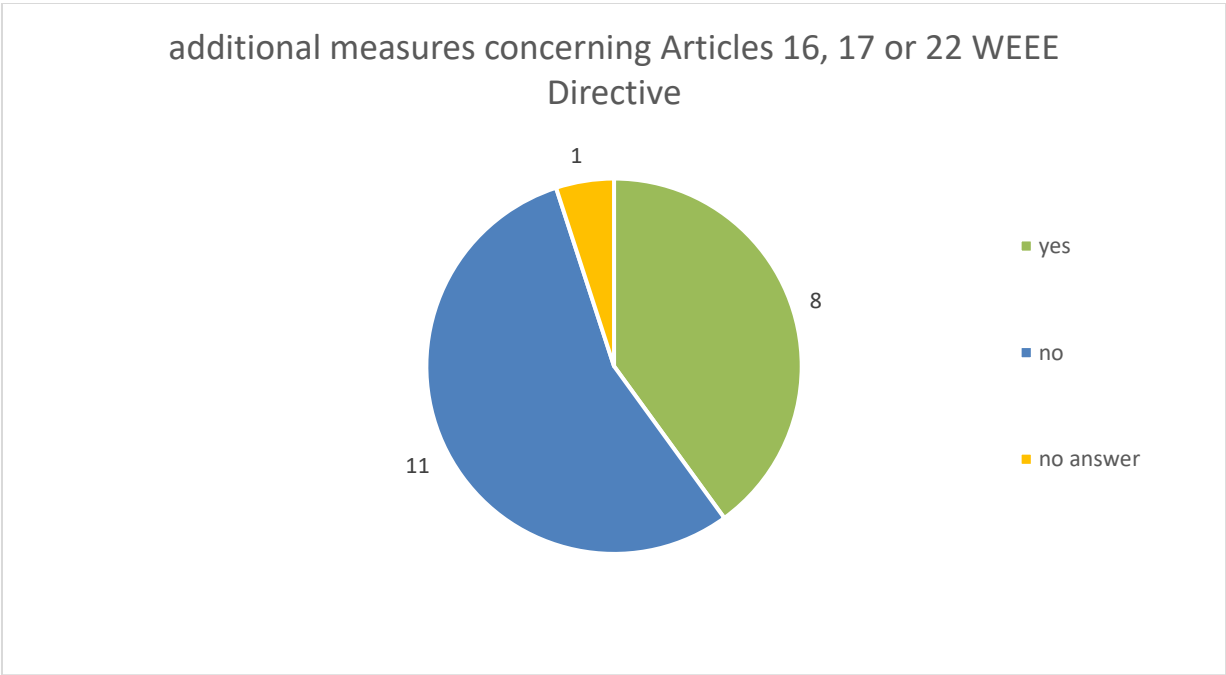
## 3. Summary information

### 3.1 Are there any measures concerning Art. 16, 17 or 22 WEEE legislation in your country which go beyond the stipulations of those Articles?

The question inquires, whether additional measures to those established in Articles 16, 17 or 22 WEEE Directive were created in any Member State. In case they were established, further focus was spent on whether those additional measures are focussed on similar aspects.

Eleven countries have not established any additional measures. Those include Austria, Belgium (Brussels capital region), Croatia, the Czech Republic, Denmark, Ireland, the Netherland, Norway, Slovakia and Slovenia as well as Sweden. One questionnaire was left empty on this regard. In Estonia, Finland, Germany, Greece, Luxembourg, Malta, Portugal and Spain additional measures were introduced.

**Chart 1.**



Those additional measures focus on various aspects, with no aspect being included in all Member States. Some similarities still exist.

Both Finland and Estonia mention to be in an informal Nordic and Estonian EPR Network for enforcement to discuss topics concerning EPR and exchange information on those. The reply from Estonia also mentioned participating in the European WEEE Enforcement Network (EWEN).

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In Germany and Greece measures were introduced to make online platforms (and in the case of Germany also fulfilment service providers) responsible for electronic and electric equipment (EEE) sold via their platforms from freeriders. In Spain a proof of being in the national producer register must be provided by the time EEE is imported into Spain<sup>1</sup>.

In Greece and Portugal collaboration with other state authorities like the General Commercial Register in Greece or customs in Portugal are established.

There are several more measures implemented in individual member states:

Estonia additionally informs the public by press releases and EPR information days held by different authorities.

Germany has established a few more additional measures. For one, 'offering' was defined as the relevant point of time for taking producer responsibility. With this change proof of sale is no longer necessary to enforce against freeriders, an offer is enough for enforcement. This makes enforcement against freeriders easier.

To further facilitate enforcement against freeriders distributors of EEE are deemed to be producers in Germany, in case the producer is not or not properly registered. By that measure it is ensured, that there is an actor who must oblige producer responsibility, especially if the producer is not established in the country. Additionally, it places the producer under pressure, since the distributor might sever business contacts with a freeriding producer.

As mentioned above already, an obligation for online platforms was introduced in Germany. That compulsory verification also extends to fulfilment service providers.

The WEEE producer register in Germany is publicly available online and searchable by various criteria. Offering this free of charge to everyone helps creating transparency and a level playing field.

In Luxembourg administrative measures and administrative fines were implemented. Administrative measures include a time limit of up to two years for the distributor or producer to comply with the provisions in the national WEEE law; full or partial suspension of the producers, distributors or operation of the establishment as a provisional measure. Otherwise the establishment can be closed completely or partially in case of non-compliance. These administrative measures are to be lifted once the producer or distributor complies with national WEEE legislation. Every interested stakeholder can request the aforementioned measures.

Luxembourg has also established administrative fines. These range in between 250,00 € and 10.000 € per infringement and have to be paid within two months of the notification of the written decision.

While most of the additional measures implemented on national level either correspond or are regarding different aspects, there is also one aspect handled very differently in two Member States. In Estonia producers of household EEE or their authorised representatives are obliged to have a written

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<sup>1</sup> <https://www.boe.es/buscar/pdf/2022/BOE-A-2022-19914-consolidado.pdf>.

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contract with a PRO. The contract with the PRO is required for fulfilling producer responsibilities as well as for effective collection and recovery/disposal of waste household EEE.

In Germany on the other hand producers or their authorised representatives are obliged to register themselves. In Germany there are no PROs for the EEE sector. Instead, there are several service providers who offer services similar to a PRO. However, the producer or authorised representative remains responsible for fulfilling their producer responsibilities.

In conclusion of national measures that go beyond the stipulations of Articles 16, 17 and 22 WEEE Directive it can be said, that there is a variety of national measures. Not all states participating in the questionnaire have introduced national measures. Some measures which have been introduced exist in similar ways in more than one country. Other stipulations are unique to one state. In one case there are two completely different approaches to obliging to producer responsibility as stated above. Further similarities and differences might be found when looking closer at how Articles 16, 17 and 22 WEEE Directive were implemented in each state in a second study. It may be concluded, that all the additional measures implemented on national level showcase an overall need to combat freeriding and to improve enforcement against freeriders.

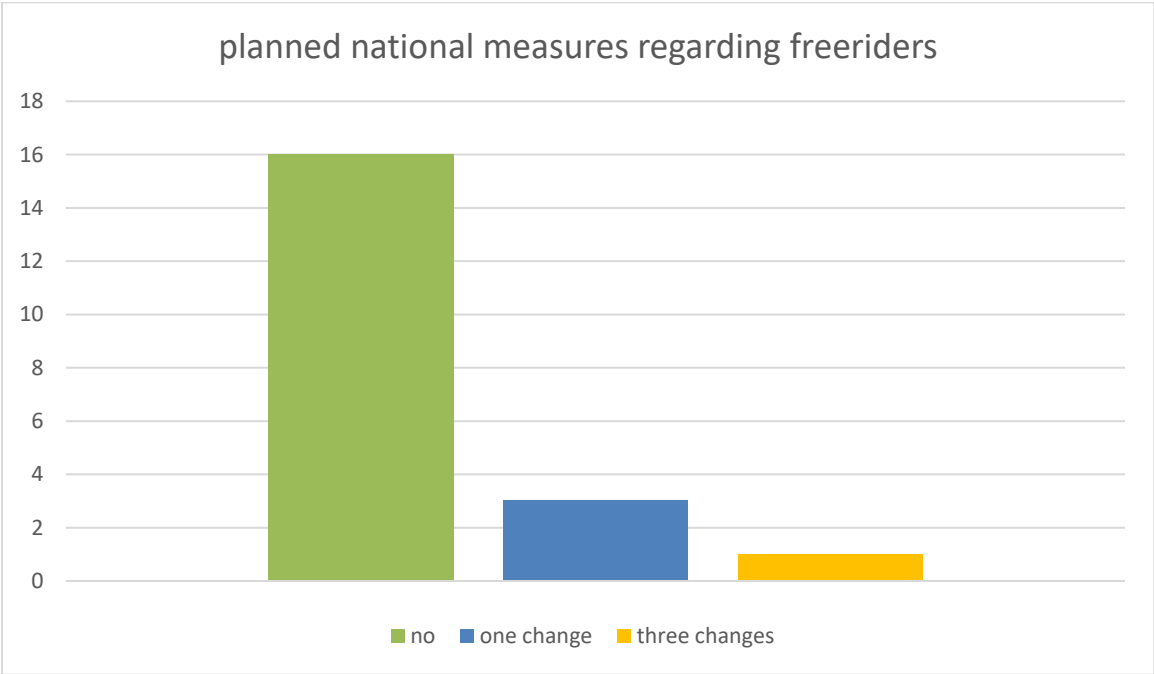
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## 3.2 Are there any national measures planned, which are not yet implemented?

While the previous question focused on national measures that already have been already implemented in national WEEE legislation, this question aims to explore any upcoming measures that go beyond Articles 16, 17 and 22 WEEE Directive. Planned measures pose the opportunity to explore whether some ideas were transferred from legislation in other member states or if further need to prevent freeriding exists.

From the total 20 answers received, most participating authorities replied that currently no new national measures are planned. These measures might include legislative changes, but also any other possible measure.

Chart 2



Answering this question with 'no' might have various reasons.

Regarding legislative measures, for one, these changes to national law might have happened recently, as is the case with several Member States. In that case, it is reasonable that no further changes are currently planned, as all obvious aspects will have been included in the legislative process. Additionally, recent legislative changes need time to be implemented and evaluated. Therefore further changes will not be made too soon.

Another reason might be, that the European Commission made a call for evidence in 2022 regarding the WEEE Directive. A change of European legislation might be expected within the next few years. As of now, at the end of December 2023, it is not yet clear if European WEEE legislation will remain a Directive or – similar to Batteries legislation – might be reworked into a Regulation. This might cause some Member States to not change their national WEEE legislation now in favour of awaiting European legislative changes.

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There might be further reasons, such as no perceived need to change current national legislation, or other national measures.

The four Member States Belgium, Estonia, Greece and have planned new measures on national level.

The three Belgian regions (Brussels capital region, Flanders, Wallonia) are working on adopting an Interregional cooperation agreement on extended producer responsibility and litter. A financial contribution to be paid by the Producer Responsibility Organization (PRO) in case the collection and processing targets set at European level are not met, is intended in this agreement. The aim is to stimulate producers to reach these rates. Money raised this way will be used by the regions to finance regional policies for the waste streams concerned.

In Greece the integrated framework law for waste management establishes the necessity of a collaboration with the General Commercial Register (GEMI). This collaboration will commence soon. The collaboration will include exchange and cross-referencing of data in compliance with provisions for the protection of personal data and commercial confidentiality.

Slovakia also intends to implement new measures. In addition to a fine freeriding producer currently have to pay in Slovakia for placing unregistered EEE on the Slovakian market, the freeriding producer will additionally have to pay the costs he did not pay a PRO for placing those EEE on the market. This measure makes freeriding even less attractive for producers. At the same time fairer competition is achieved on the Slovakian market as collection and treatment costs are paid by more producers as freeriding goes down.

In Estonia there are currently three different measures planned: First, Estonia intends to find a solution for making freeriders operating via online marketplaces register themselves at the register relevant for their products.

Second, Estonia intends to analyse the German requirement for producers/distributors to display their registration number when selling EEE online.

In addition, an analysis concerning a requirement to present the user information on waste management costs for WEEE is planned.

In conclusion it can be said, that while the majority of study participants does not currently plan any additional measures, there are some countries planning additional measures concerning a wide range of topics. These measures include legislative changes, implementation of new legislation and analysis of various enforcement and producer responsibility aspects. The replies also show clearly, that best practices from other countries within the WEEE Art. 17 project are being taken into account for possible future measures.

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### 3.3 Who is responsible for the enforcement (sanctions/prosecution) against freeriders?

The Table 1. below is a list of the organisations responsible for the enforcement against freeriders in each of the 20 EWEN member countries that responded to the questionnaire.

**Table 1.**

<b>Country</b>	<b>Organisation with responsibility for freerider enforcement (sanctions/prosecutions)</b>
<b>Austria</b>	BMK (Republic of Austria Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology)
<b>Belgium (Brussels capital region)</b>	There are 3 Regions in Belgium which have autonomy. The Brussels Environmental Agency (Leefmilieu Brussel/Bruxelles Environnement) is responsible for enforcement in the Brussels-Capital Region
<b>Croatia</b>	Customs
<b>Czech Republic</b>	Czech Environmental Inspectorate
<b>Denmark</b>	EPA
<b>Estonia</b>	Environmental Board
<b>Finland</b>	Pirkanmaa Centre for Economic Development, Transport and the Environment (ELY Centre)
<b>Germany</b>	The German Environment Agency (UBA), Section III 1.2, Subsection regulatory offences Electrical and Electronic Equipment Act/Batteries Act
<b>Greece</b>	Hellenic Recycling Agency
<b>Ireland</b>	Environmental Protection Agency
<b>Lithuania</b>	Department of Environmental Protection under the Ministry of Environment
<b>Luxemburg</b>	The Environmental Agency of Luxembourg
<b>Malta</b>	Compliance and Enforcement Unit within the Regulatory Affairs Directorate at the Environment and Resources Authority
<b>Netherlands</b>	Human Environment and Transport Inspectorate (HETI)
<b>Norway</b>	Norwegian Environment Agency
<b>Portugal</b>	ASAE – Economic and Food Safety Authority (ASAE TOPICS ENGLISH) General Inspection of Agriculture, Sea, Environment and Spatial Planning (IGAMAOT)
<b>Slovakia</b>	Slovak Environmental Inspectorate
<b>Slovenia</b>	Environment and Energy Inspectorate
<b>Spain</b>	Autonomous communities (regions) are responsible
<b>Sweden</b>	Swedish EPA

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### 3.4 How does the competent body get information about freeriders?

Member States were requested to state how the competent authority gets information about freeriders in their country (i.e., the techniques or sources of information). The questionnaire responses have been coded into the 14 options as listed below:

- Complaints/Whistle blowers
- PROs/Compliance Schemes
- Customs
- Intelligence (from research, customs, other reports, etc.)
- Other authorities/organisations
- Online searches
- Inspections
- Other producers
- Registration body
- Market surveillance
- Other Member States
- Other regions
- Risk analysis
- Sector campaigns

The Table 2. below lists the coded ‘techniques or ‘sources of information’ each member state uses to obtain information about freeriders. Member of EWEN may use additional methods, but the entries below were included in the questionnaire responses received.

**Table 2.**

Country	How does the competent authority obtain information about freeriders?
<b>Austria</b>	<ul style="list-style-type: none"> <li>• Other authorities/organisations</li> <li>• Online searches</li> </ul>
<b>Belgium (Brussels capital region)</b>	<ul style="list-style-type: none"> <li>• Inspections (of other operators)</li> <li>• Other Member States</li> <li>• Other regions</li> <li>• PROs/Compliance Schemes</li> </ul>
<b>Croatia</b>	<ul style="list-style-type: none"> <li>• Customs</li> </ul>
<b>Czech Republic</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• PROs/Compliance schemes</li> <li>• Intelligence (Customs)</li> <li>• Other producers</li> </ul>
<b>Denmark</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> </ul>
<b>Estonia</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Customs</li> <li>• Intelligence (other reports)</li> <li>• Other producers</li> <li>• Risk analysis</li> </ul>
<b>Finland</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Customs (in the future for producers outside EU)</li> <li>• Online searches</li> <li>• PROs/Compliance Schemes</li> </ul>

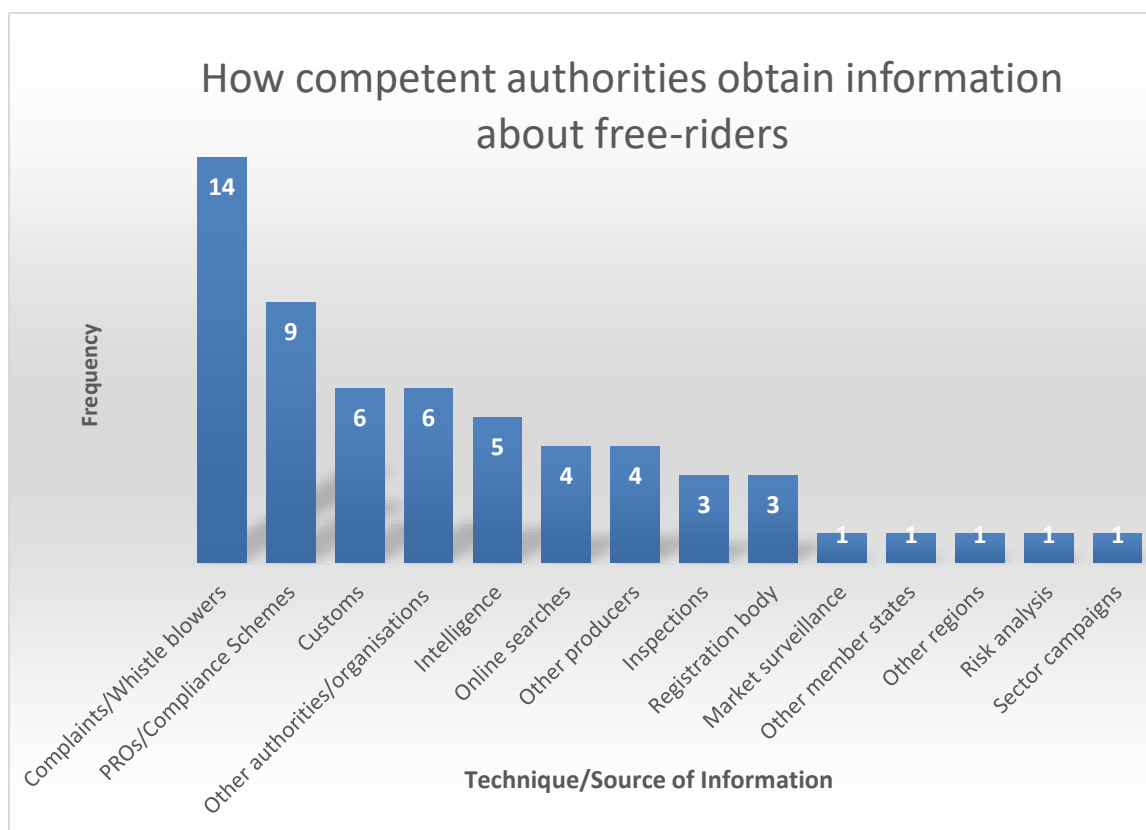


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<b>Germany</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Intelligence (research and internal information)</li> <li>• Registration body</li> </ul>
<b>Greece</b>	<ul style="list-style-type: none"> <li>• PROs/Compliance Schemes</li> <li>• Complaints/Whistle blowers</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Online searches (Distance seller inspections)</li> <li>• PROs /Compliance Schemes</li> <li>• Registration body</li> <li>• Sector campaigns (letters, phone calls, enforcement notices)</li> </ul>
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Other authorities/organisations</li> </ul>
<b>Luxemburg</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Other authorities/organisations</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Inspections (weekly)</li> <li>• Market surveillance</li> <li>• Online searches</li> <li>• PROs /Compliance Schemes</li> </ul>
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>• Intelligence</li> </ul>
<b>Norway</b>	<ul style="list-style-type: none"> <li>• Customs</li> <li>• PROs /Compliance Schemes</li> </ul>
<b>Portugal</b>	<ul style="list-style-type: none"> <li>• Other authorities/organisations (Environment Agency)</li> <li>• Customs</li> </ul>
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Intelligence (Internal information)</li> <li>• PROs /Compliance Schemes</li> </ul>
<b>Slovenia</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Other authorities/organisations</li> <li>• Other producers</li> <li>• PROs /Compliance Schemes</li> </ul>
<b>Spain</b>	<ul style="list-style-type: none"> <li>• Complaints</li> <li>• Inspection campaigns</li> </ul>
<b>Sweden</b>	<ul style="list-style-type: none"> <li>• Complaints/Whistle blowers</li> <li>• Customs</li> <li>• Other authorities/organisations</li> <li>• Other producers</li> <li>• PROs /Compliance Schemes</li> </ul>

Chart 3. below summarises the responses from all 20 EWEN member countries in relation to how information is obtained about freeriders. This chart is based on the coding of all questionnaire responses. The frequency value is equal to the number of member countries that referenced a specific 'technique or source of information'.

### Chart 3.



By far the most common source of information comes from complaints/whistle blowers (14), often received by way of a submitted form. The second most common source of information is from Producer Responsibility Organisations (PROs)/Compliance Schemes. In total 14 different ‘techniques or sources of information’ were referenced in the questionnaire responses.

### 3.5 What does the competent body do (fines or other procedures), if producers are not registered (freeriders)

Question 9 concerned the ways EWEN member countries enforce freeriders. The question was divided into three parts: enforcement of domestic freeriders, freeriders within the EU, and freeriders outside of the EU.

#### 3.5.1 Enforcement of domestic freeriders

According to the answers, member countries have two main ways of starting the enforcement process. Some countries start by contacting the freerider to provide them with information on how to meet their EPR responsibilities. These countries only proceed to administrative procedures later in the process. Other countries start the process directly with an administrative procedure, while a part of the countries use a mix of the two main approaches.

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The majority of countries expressed that there is a legislative framework in place to fine producers for non-compliance.

### *Notification of non-compliance*

Many countries (Austria, Sweden, Finland, Denmark, Luxembourg, Netherlands) begin the enforcement process with a letter or other type of formal notification of non-compliance. Most commonly, the letter informs the producer of their extended producer responsibilities, sets a deadline and informs the producer of the possibility of a penalty. If necessary, a follow-up letter can be sent, or a phone call can be made to contact the producer or to receive extra information concerning the EEE that is placed on the market. Some countries reported that this practice was found to be quite effective in getting domestic freeriders to comply.

### *Regulatory offence procedure/ administrative procedure*

Other countries, such as Germany, Belgium (Brussels capital region), Croatia, Czech Republic, Estonia, Ireland, Norway, Portugal and Spain, proceed directly with a regulatory offence procedure. In Germany, for example, once a producer has been confirmed to be a freerider, a hearing is sent and a regulatory fine can be imposed. If the producer objects to the fine, a review will be done. The review can have three possible outcomes: termination of the procedure, an amended regulatory fine, or forwarding the case to the district court for a court case.

### *Other practices (on-site inspections, co-operation with Customs and police)*

Some countries such as Slovakia, Slovenia, Lithuania, Greece and Czech Republic perform on-site inspections when needed. The inspectors check various types of documents and invoices to determine the amount of EEE placed on the market and to find out whether a producer is registered and pays recycling fees to the producer responsibility organization.

Slovakia and Slovenia told that they are working together with Customs in regards to domestic freeriders. In Slovenia, the Customs can relay information e.g. if there are discrepancies with sales data (quantity of EEE placed on the market).

Denmark, Germany and Slovakia expressed that they co-operate with the police and a penal case is possible.

### 3.5.2 Enforcement of freeriders established in the EU

Regarding distance sellers within the EU, the answers revealed two main practices. Some countries contact foreign freeriders and others rely on informing the Member State where the company is located.

#### *Contacting freerider*

Once a foreign freerider (distance seller) is found, a part of the countries contact the company (Finland, Ireland, Belgium, Estonia, Sweden). If the company does not comply, a complaint form can be sent or

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another type of contact made with the authority of the country where the company is located. For example in Finland, an email describing the company's responsibilities is sent with clear instructions on how to take care of EPR. If necessary, a reminder or more instructions are sent. Only after that administrative assistance is asked from the country where the company is located.

Some countries mentioned contacting the company (Luxembourg, Netherlands) but did not provide information on further steps.

### *Informing authorities of the Member State*

Some countries inform the Member State where the company is located directly (Czech Republic, Denmark, Germany, Portugal, Slovakia, Spain). This can be done e.g. by using the EWEN complaint form and forwarding it to the relevant country. Germany specifies that the complaint contains the producers address, proof of not being registered in Germany and not being established there, and evidences concerning the freeriding.

### *Other practices*

Belgium (Brussels capital region) informed that they follow the same procedure as with domestic freeriders (although has no experience with penalties). Estonia stated that they have used administrative proceedings (writing a precept to producer to register to the register of product of concern). Upon failure to comply with a precept, the upper limit of non-compliance levy is 32,000 €. Estonia also forwards the information about a foreign freerider to the respective Member State competent body. Some countries did not answer this question or were not yet familiar with enforcement of foreign freeriders (Austria, Croatia, Latvia, Lithuania, Norway, Slovenia). Slovakia mentioned that the enforcement of foreign freeriders is perceived as a difficult task due to the costs of official requests and translations of official documents. In general, it seems that there is limited experience with enforcement of foreign freeriders and asking for assistance from other Member States.

### 3.5.3 Enforcement of free riders established outside of the EU

Regarding freeriders established outside of the EU, most countries found enforcement difficult due to lack of legal tools and/or did not have much experience with it. Ireland explained that the EPA occasionally deals with non-EU freeriders, for example, from the US. In this instance a formal notification of non-compliance is issued, however, enforcement options for non-EU freeriders are very limited. Luxembourg, Finland and Sweden answered that they take up contact with the freeriding company. Netherlands, Spain and Portugal told that the authority in the country of origin would be contacted.

Some countries did however have a solution through co-operation with customs (Estonia, Spain, Portugal). In Estonia, The Environmental Board has a right to apply confiscation. Estonian Tax and Customs Board keeps the product and releases it when all requirements have been fulfilled.

In Germany there is legislation in place for online marketplaces. When the product is offered via an online marketplace or a fulfilment service provider is contracted, the marketplace or fulfilment service provider has the obligation to check whether the producer of the electrical device is (correctly) registered (compulsory verification). If the online marketplace or the fulfilment service provider offer

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their services without the producer's registration, they become subject to a regulatory offence procedure.

In Spain if non-compliance is detected at customs, it is possible to freeze the goods until the producer registers. It is only possible to sanction if a producer is established in the Member State. If a non-EU producer tries to import EEE without being registered, the customs inspection service will detain the goods until the producer is registered or appoints an Authorised Representative.

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### 3.6 Is the enforcement procedure established in the same law as the national implementation of the WEEE Directive?

Project members were asked if the enforcement procedure against freeriders is established in the same law as the national WEEE legislation.

Table 3:

Country	Enforcement procedure established in same law as national implementation of the WEEE Directive?
<b>Austria</b>	<ul style="list-style-type: none"> <li>No, there is no specific enforcement procedure. The enforcement procedure is established in the General Administrative Procedure Act and the Administrative Criminal Law</li> </ul>
<b>Belgium (Brussels capital region)</b>	<ul style="list-style-type: none"> <li>No</li> </ul>
<b>Croatia</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Czech Republic</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Denmark</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Estonia</b>	<ul style="list-style-type: none"> <li>Waste Act sets EPR requirements and State supervision over compliance with the requirements arising from Waste Act shall be exercised by the Environmental Board.</li> <li>Waste Act sets administrative procedure act precept levy rate and fines for violation.</li> </ul>
<b>Finland</b>	<ul style="list-style-type: none"> <li>Enforcement procedure is in the Waste Act (646/2011).</li> <li>National implementation of WEEE Directive is divided between the Waste Act and the Government Decree on WEEE (519/2014).</li> </ul>
<b>Germany</b>	<ul style="list-style-type: none"> <li>No, it is established in the Act on Regulatory Offences (Gesetz über Ordnungswidrigkeiten -OWiG).</li> <li>Some details are laid down in further laws.</li> </ul>
<b>Greece</b>	<ul style="list-style-type: none"> <li>Ministerial Decision 23615/651/E.103/9-5-2014, national implementation of the WEEE Directive refers to Law 4819/2021 the legal framework for waste management. The enforcement procedure is being revised for the moment according to the prerequisites of the Law 4819/2021.</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>
<b>Luxemburg</b>	<ul style="list-style-type: none"> <li>Parts of the enforcement procedure are also established in the National Waste Act.</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>no</li> </ul>
<b>Norway</b>	<ul style="list-style-type: none"> <li>The enforcement procedure are established in the same law as the WEEE-directive.</li> </ul>
<b>Portugal</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>yes</li> </ul>
<b>Slovenia</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>
<b>Spain</b>	<ul style="list-style-type: none"> <li>No</li> </ul>

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<b>Sweden</b>	<ul style="list-style-type: none"><li>• Sanctions regarding reporting is in one separate law and the rest is in the national implementation of the WEEE Directive. The treatment of WEEE and how WEEE should be collected is regulated in the national waste regulation.</li></ul>
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As can be seen in table 3, answers varied not only between 'yes' and 'no', like the authors of this study expected, but slightly more varied. In six countries - Austria, Belgium, Germany, Greece, the Netherlands and Spain – rules determining the enforcement procedure are laid down in a different law to the national WEEE legislation.

In another 9 countries – Estonia, Croatia, Czech Republic, Denmark, Ireland, Lithuania, Malta, Portugal, Slovakia and Slovenia – the enforcement procedure is established in the same law as the national WEEE legislation.

To answer the question for Finland, Luxembourg and Sweden a slightly more detailed perspective is necessary, as they fit neither the 'yes' nor 'no' group. In Finland the implementation of the WEEE Directive is split between two laws – the Waste Act and the Government Decree on WEEE. The enforcement procedure as a whole is established in the Waste Act.

Luxembourg has established parts of its enforcement procedure in their National Waste Act, thus creating yet another different approach.

Sweden seems to have established an approach similar to Luxembourg, with enforcement being established in two laws. Sanctions regarding reporting is laid down in a separate law while the remaining sanctions are established in Sweden's national implementation of the WEEE Directive.

Considering the received replies it becomes apparent, that the legal establishment of the respective enforcement procedure the EU Member States and EFTA States was done in different ways. Of all replies received half of the countries have implemented the enforcement procedure in the same law as the implementation of the WEEE Directive. In two thirds of the answers the Member State had the enforcement procedure established in a different law. A third of the answers detailed that either the WEEE Directive was established (partially) in more than one national law or that enforcement procedure was split between two laws.

It can be assumed, that these different approaches stem from either national approaches where there is a common national approach to enforcement. This common approach might include acts belonging to one overhead topic<sup>2</sup> or all national acts.

At the same time an enforcement procedure in the same legislation as the WEEE Directive's implementation might indicate a varying approach towards enforcement procedure between legislation.

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<sup>2</sup> E.g. waste.

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Whether those assumptions are correct was not explored in this short study. The insight into that topic is interesting on an academic level, but holds little relevance to the research this study intended to do.

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### 3.7 Are there any additional measures, collaborations or campaigns to prevent free-riding outside of enforcement? Who initiated or carries out those actions?

The Table 3. below lists additional measures, collaborations or campaigns carried out by member countries to prevent free riding, outside of enforcement, and also those who initiated or carried out those actions.

**Table 4.**

Country	Additional measures, collaborations or campaigns to prevent free riding outside of enforcement? Who initiated or carries out those actions?
<b>Austria</b>	<ul style="list-style-type: none"> <li>Information/communication campaigns (e.g. Chamber of Commerce)</li> </ul>
<b>Belgium (Brussels capital region)</b>	No
<b>Croatia</b>	No
<b>Czech Republic</b>	No
<b>Denmark</b>	<ul style="list-style-type: none"> <li>Campaigns, e.g., producers of light sources, (by Registration body)</li> </ul>
<b>Estonia</b>	<ul style="list-style-type: none"> <li>Household EEE Producers required to have contract with PRO.</li> <li>Media campaigns (by Ministry, Environmental Board, Environmental Agency)</li> <li>Information days about EPR (e.g., PV panel producers) by Ministry, Environmental Board, Environment Agency</li> </ul>
<b>Finland</b>	<ul style="list-style-type: none"> <li>Media campaigns (newsletters, webinars, targeted information)</li> <li>Communication for foreign distance sellers</li> </ul>
<b>Germany</b>	No
<b>Greece</b>	No
<b>Ireland</b>	<ul style="list-style-type: none"> <li>Information/communication campaigns (with organisations that represent different sectors to inform producers)</li> </ul>
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>Yes - no specific measures listed</li> </ul>
<b>Luxemburg</b>	<ul style="list-style-type: none"> <li>Yes - no specific measures listed (by Environmental Agency and/or the Ministry of Environment)</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>Proactive inspections (by Environment and Resources Authority)</li> <li>Information/communication campaigns (by PROs)</li> </ul>
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>Contact free riders (by Registration body)</li> </ul>
<b>Norway</b>	<ul style="list-style-type: none"> <li>Contact free riders (by PRO)</li> </ul>
<b>Portugal</b>	No
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>Experimental techniques (by Institute of Environmental Policy)</li> </ul>
<b>Slovenia</b>	No
<b>Spain</b>	No
<b>Sweden</b>	<ul style="list-style-type: none"> <li>Obtain information on start-up companies</li> </ul>

Eight (8) EWEN member countries did not carry out any additional measures. The additional twelve (12) member countries listed a range of different additional measures as specified in Table 3 above. This included information/media campaigns, targeted communications and information days, as well as specific actions taken by other organisations.

### 4. Conclusion

Looking at the answers provided in the questionnaire and comparing them makes it obvious, that each state has gone its own way with the implementation of the WEEE Directive into their respective national law. While there are overlapping ideas and similar measures, no national law is identical to another one. In some points, such as the introduction of enforcement procedure in national law there are more similarities and parallels than in established or upcoming additional measures.

This shows very clearly, that while the Directive sets a legislative framework for the Member States, it leaves the opportunity for various great approaches. It also offers incredible chances for Member States to learn from each other's best practice examples. The multitude of great approaches alone in regards of preventing WEEE EPR freeriders is impressive. It becomes obvious, that while some approaches and measures are more common than others, there is no single 'best' implementation of the WEEE Directive. Simultaneously, national specifics can be taken into account, which would not be possible if EU WEEE legislation was a Regulation instead of a Directive.

A Regulation offers a common approach and therefore comparability as well as more simplicity. At the same time introducing a Regulation after a Directive has been in place for a long time requires careful analysis of best practice aspects implemented in the respective implemented national laws, in order to achieve optimal results.

The findings in this study have clearly illustrated, that indeed we are *United In Diversity* in our national measures to prevent freeriding regarding WEEE EPR, with a common goal we aim to achieve in enforcement. We are looking forward to gaining even deeper insights with next year's short study regarding the implementation of Articles 16, 17 and 22 WEEE Directive into national law. It surely will shine some light on more interesting aspects of our national WEEE legislations.

# Annex

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## IMPEL WEEE Art. 17 project

### Annex I. Short study on national measures to reduce free-riding -Questionnaire

In 2019 a project concerning the implementation of Art.17 WEEE Directive and related topics was established within IMPEL. This project serves to

- improve and simplify the enforcement of Art. 17 WEEE and prosecution of European cross-border WEEE free-riders,
- facilitate international cooperation in cross-border prosecution,
- offer a non-bureaucratic and simple way to communicate between competent authorities.
- facilitate exchanging experiences in enforcement and prosecution of cross-border WEEE free-riders and in implementation of the requirements of the WEEE Directive regarding authorised representative in the other EU member states.

A way to improve and simplify the prosecution of European cross-border WEEE free-riders and to further international cooperation in cross-border enforcement is regular exchange between the responsible colleagues in the enforcement agencies.

Additionally, sharing how the WEEE Directive is implemented in each member state increases not only a shared common knowledge base and eases international cooperation. It highlights similarities and different approaches to specific issues. This in turn allows to establish best practise examples more clearly.

In order to achieve the mentioned gains in knowledge, the questionnaire below was created.

The WEEE Directive addresses registration, information and reporting of producers in Article 16. Article 22 WEEE Directive empowers member states to establish penalties for violations of national provisions. This includes producers not registering in the member state they sell to:

*WEEE directive (2012/19/EU):*

*Article 16 Registration, information and reporting*

*1. Member States shall, in accordance with paragraph 2, draw up a register of producers, including producers supplying EEE by means of distance communication. That register shall serve to monitor compliance with the requirements of this Directive.*

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*Producers supplying EEE by means of distance communication as defined in Article 3(1)(f)(iv) shall be registered in the Member State that they sell to. Where such producers are not registered in the Member State that they are selling to, they shall be registered through their authorised representatives as referred to in Article 17(2).*

### Article 22 Penalties

*The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 14 February 2014 at the latest and shall notify it without delay of any subsequent amendment affecting them.*



## General questions

From which country are you?

For which authority are you working?

## Implementation of WEEE legislation Art. 16 and Art. 22 and national measures

1. Are there any measures concerning Art. 16, 17 or 22 WEEE legislation in your country which go beyond the stipulations of those Articles?

Please enter your answer here.

2. Are there any national measures planned, which are not yet implemented?

Please enter your answer here.

## Enforcement

3. Who is responsible for the enforcement (sanctions/prosecution) against free-riders?

Please enter your answer here.



4. How does the competent body (7.) get information about free-riders?

Please enter your answer here.

5. What does the competent body do (fines or other procedures), if producers are not registered (free-riders) and

a.) established within the member state (domestic free-riders)

Please enter your answer here.

b.) or established in the EU (foreign free-riders)

Please enter your answer here.

c.) or established outside the EU (foreign free-riders)?

Please enter your answer here.

6. Is the enforcement procedure established in the same law as the national implementation of the WEEE Directive?

Please enter your answer here.

7. Are there any additional measures, collaborations or campaigns to prevent free-riding outside of enforcement? Who initiated or carries out those actions?

Please enter your answer here.