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## Distribution of responsibilities between DPA-System, producers and collective schemes.

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## 1. Background

Producers and importers (in the following referred to as Producers) of electrical and electronic equipment as well as batteries and vehicles share the ambition of the authorities to secure environmentally and economically sustainable management of waste products. This ambition is shared across the EU and at the global level.

In Denmark the main players in the producer responsibility system are: Producers, Ministry of the Environment, DPA-System, collective schemes, local authorities and recycling industries. The players have different roles, tasks and responsibilities – individually and jointly – across the system chosen to implement producer responsibility in Denmark.

This memo describes roles, tasks, responsibilities as well as the interplay between producers, collective schemes and DPA-System. The document follows a previous document describing the interface between the Danish Environmental Protection Agency and DPA-System. The memo is part of the by-laws of DPA-System and appears on the DPA-System website.

The document has been drawn up to give the reader an opportunity to get an overview of the producer responsibility system for electrical equipment, batteries and vehicles as well as a general description of affected players. The document has no legal effect, since producer responsibility is exclusively regulated by the relevant statutory orders and, for practical matters, by procedures established and published by DPA-System.

The document contains three appendices describing main players in Denmark as well as the statutory framework specifying roles, tasks and responsibilities of each player. The appendices give a quick overview of the design of the producer responsibility system.

## 2. Interplay between DPA-System, producers and collective schemes

In connection with assumption of tasks under the law, the interplay between DPA-System, producers and collective schemes arises in:

- A. Registration of producers
- B. Producers' annual reporting
- C. Allocation
- D. Provision of financial guarantee.
- E. Assessment whether a company or its equipment is covered by producer responsibility, and for which categories and final users

In addition, information is exchanged continuously about producer responsibility between producers and DPA-System for issues not directly specified in the law:

- F. General information about producer responsibility and guidance to producers

## Re. A. Registration

A producer must register for producer responsibility in the DPA-System producer register. A producer may also have a collective scheme undertake the assignment of registering, but it is the producer who must be registered for producer responsibility.

Producers from an EU country dealing in distance selling directly to end-users in Denmark must upon registration designate an authorised representative (AR) in Denmark to assume their producer responsibility in Denmark.

Producers from a non-EU country dealing in distance selling directly to end-users in Denmark cannot use an authorised representative but must register in the producer register and assume their producer responsibility in Denmark. In line with other producers such foreign producers may enter an agreement with a collective scheme to assume some of the practical tasks associated with the producer responsibility.

In connection with the first registration of a producer in the producer register the producer must always formally assume the producer responsibility himself and document his identity by a CVR number/VAT number for foreign producers and a statement of person responsible to DPA-System. This is done by logging into the producer register, printing the confirmation and having it signed by a representative for the responsible management after which the form is submitted to DPA-System. The producer may also state that the statutory fees to DPA-System must be submitted by invoice to another party than the producer. This party may be a collective scheme or an invoicing address.

Producers from an EU country dealing in distance selling to end-users in Denmark must upon registration designate an authorised representative in Denmark to assume their producer responsibility in Denmark.

DPA-System being responsible for the register draws up an official and valid confirmation that the producer is registered in the producer register. The producer must print this confirmation directly from the producer register after log-in.

If a producer wishes to enter a new agreement with another collective scheme than the first one or if he leaves a collective scheme in order to become an individual complier he must inform DPA-System accordingly. DPA-System will make the transfer in the producer register and can only do so on the basis of documentation from the producer.

If a collective scheme does not wish to cooperate with a producer the scheme can inform DPA-System accordingly. DPA-System will change the status of the producer into individual complier and inform the producer accordingly.

If a producer wishes to replace his authorised representative (BR) this must be notified to DPA-System. The transfer of responsibility between the two authorised representatives will not be valid until the producer and the (new) authorised representative have stated all the requested information.

If an authorised representative cannot meet his obligations due to issues relating to the producer he represents, the authorised representative can delete his relation to the producer. A cease of this relation must be notified to DPA-System immediately; DPA-System will maintain the producer responsibility directly to the producer until a new authorised representative has been designated.

The authorised representative takes over the producer's legal status/rights during the period in which he represents the producer; this may be in relation to agreements with collective schemes, waste carriers, or reprocessors or regarding reporting of data etc. to the producer register.

#### Re. B. Producers' annual reporting

A producer can choose to have a collective scheme assume part of the administration in connection with the producer responsibility, for instance registration and annual reporting. This means that the collective scheme keeps all master information of the producer in the producer register up to date, and the collective scheme assumes annual reporting on behalf of the producer. The producer remains responsible for compliance with reporting deadlines and accuracy of information reported by the collective scheme.

To help the producer ensure compliance with the reporting deadlines DPA-System submits a notice to the producer prior to the opening of the annual reporting period. Also, the producer is notified if reporting has not been completed correctly by the deadline of 31 March.

To help the producer ensure reporting of correct data DPA-System draws up one complete annual statement with all reports of the producer to DPA-System that the producer must control at the end of the reporting period. The annual statement can be printed directly from the producer register after log-in.

The producer himself must control that the collective scheme has reported correct data in the producer register. If an auditor's attestation is required, the auditor must control whether reporting has been carried out correctly in the producer register. The producer must also ensure that corrections, if any, have been made further to previous auditor controls. DPA-System therefore puts information at the disposal of the producer and his auditor thereby giving access to control all producer data in the producer register. Management's statement or auditor's attestation must be submitted to DPA-System who registers receipt.

#### Re. C. Allocation

DPA-System calculates every year an allocation of household WEEE and/or waste portable batteries to producers subject to producer responsibility. The calculation is made for each producer. If the producer is not affiliated to a collective scheme the allocation is notified to the individual complier.

If the producer has joined a collective scheme to delegate the tasks of take-back and treatment of household WEEE and/or portable batteries, DPA-System will consolidate allocation of WEEE and/or portable batteries for all producers in the collective scheme in question. However, this is done in a way that a separate calculation is available for each producer.

The allocation is based on the proportionate share of quantities placed on the market realized by each producer and other criteria set up for the allocation.

Generally, the allocation is not notified directly to producers affiliated to a collective scheme. Here, the interplay takes place between DPA-System and the collective schemes. However, a producer can always contact DPA-System to be informed of his individual obligations.

The result of the allocation is that DPA-System allocates to the collective scheme a quantity and related geographical areas, typically a number of local authorities, from where WEEE and/or portable batteries must be collected.

The allocation will also be made for individual compliers even if their market share is not of sufficient size for allocation of collection points.

#### Re. D. Financial guarantee

Producers placing household electrical and electronic equipment on the market must provide a financial guarantee. Based on the allocation DPA-System calculates the magnitude of the financial guarantee.

If a producer has chosen individual compliance he himself must provide the guarantee and DPA-System will present the requirement for provision of financial guarantee directly to the producer. If the producer has delegated the task of collection and treatment to a collective scheme an aggregate obligation is calculated for all producers in the collective scheme. The financial guarantee is calculated for each producer and is consolidated for the collective scheme. DPA-System submits the requirement for provision of the aggregate financial guarantee to the collective scheme.

A collective scheme can apply for exemption from provision of the financial guarantee with DPA-System. DPA-System will handle the application in compliance with the provisions on exemption as stated in the law. Individual compliers cannot be granted exemption from provision of financial guarantee.

#### Re. E. Assessment of companies and products under the producer responsibility scheme

DPA-System must decide on the following issues:

- Whether a company is covered by the producer responsibility for electrical and electronic equipment and/or batteries (in the future also motor-driven vehicles).
- Whether electrical and electronic equipment, batteries or motor-driven vehicles are covered by producer responsibility.
- The category to which electrical and electronic equipment and/or batteries can be assigned.
- Whether electrical and electronic equipment placed on the market must be registered as intended for private and/or professional use (so-called end-user of equipment).

In all the above cases DPA-System is under the statutory duty to make an assessment and a decision. DPA-System must make its decisions within the framework governed by provisions in the Environmental Protection Act and the specific Statutory Orders as well as instructions from the Environmental Protection Agency.

DPA-System maintains a close dialogue with sector organisations in cases relating to products.

Complaints about decisions made by DPA-System relating to a producer can be brought before the Danish Environmental Protection Agency.

#### F. General information about producer responsibility and guidance to producers

DPA-System gives general information and guidance on the producer responsibility system to companies and other players. DPA-System must always provide correct and competitively neutral guidance cf. the duty stipulated in Appendix 1 regarding equal treatment and duty of information under the Danish Public Administration Act.

## **Appendix 1. Distribution of responsibilities and key players**

The producer responsibility involves a number of key players each solving different tasks under the producer responsibility system. Players are:

- Ministry of the Environment, including the Environmental Protection Agency
- DPA-System
- Producers
- Authorised representative
- Collective schemes
- Local authorities (not dealt with in this document)
- Recycling industries (not dealt with in this document)

Ministry of the Environment, including the Environmental Protection Agency

The Ministry of the Environment is overall responsible for the statutory basis, interpretation and implementation. The Environmental Protection Agency is responsible for supervision and enforcement. Also, the Environmental Protection Agency is responsible for development and interpretation of the administrative framework of DPA-System and of enforcement of the rules when necessary.

Organization responsible for the system – DPA-System

DPA-System's tasks have been delegated by the Minister for the Environment and are described in the Environmental Protection Act (EPA) and in the three specific Statutory Orders on WEEE, BAT and ELV. DPA-System is the organization responsible for current administration of a number of statutory tasks appearing from the law.

The law is designed in a way that a number of tasks have been defined for DPA-System to execute according to specific instructions from the Minister for the Environment. DPA-System is subject to the Danish Public Administration Act and the Act on Public Access to Documents in Administrative Files. DPA-System is thereby covered by the provisions of the Public Administration Act on equal treatment and duty of information to companies.

The Environmental Protection Agency supervises DPA-System.

The National Auditors carry out financial and administrative audits of DPA-System.

This regulatory control is to ensure that delegated tasks are carried out in pursuance of the law and as prescribed by authorities. Control and the right to complain are meant to ensure that the legal protection of producers is fully considered.

DPA-System as the organization responsible for the system must act competitively neutral in relation to producers and collective schemes, and in terms of ownership, management and interests full separation between this organization, individual producers and collective schemes must be ensured.

## Producers

Producers are key players of the producer responsibility system. The producer is the one subject to producer responsibility. The producer responsibility cannot be transferred to another party except in the case of an authorised representative. Therefore the producer is always responsible for complying with the producer responsibility towards authorities and DPA-System. Furthermore, legislation has been established in a way that the producer can choose to have other players, such as a collective scheme, assume some of the practical tasks associated with producer responsibility.

If a collective scheme or any other party does not solve the tasks according to the law, this does not relieve the producers for their responsibility. DPA-System and the Environmental Protection Agency will in this case be obliged to enforce the producer responsibility directly towards the producer.

### *When the producer uses an authorised representative*

Producers using an authorised representative transfer some, but not all, duties under the producer responsibility scheme to the authorised representative, for as long as this agreement remains valid.

This does not mean that the producer is exempt from responsibility during the validity of the agreement. The producer must supply sufficient and accurate information to the authorised representative, permitting the latter to meet his statutory duties. Producers not complying with this duty are subject to a stand-alone legal responsibility in relation to the violated provisions of the law. Producers can only have one authorised representative at a time and an authorised representative is always established in Denmark with a CVR number.

### *When a producer is not affiliated to a collective scheme*

The producer can choose to individually comply with the producer responsibility and cooperate with one or more hauliers and reprocessing companies that assume collection and treatment of WEEE and/or waste batteries. Furthermore, the producer can have other external parties, i.e. auditors, lawyers, consultants or other service providers assume some of the administrative tasks in connection with the producer responsibility. These administrative tasks may be, for instance, reporting to DPA-System.

### *When a producer is affiliated to one or more collective schemes*

The producer can also delegate some of the tasks to service providers, so-called collective schemes. Being affiliated to a collective scheme may be a means for the producer to attain a number of logistical economies of scale in connection with collection and treatment of WEEE. Economies of scale arise through the fact that the collective scheme operates on behalf of several producers.

The producer can choose to use none, one or several collective schemes at the same time and he can delegate one or more of the tasks under the producer responsibility to these schemes based on a commercial agreement.

## Collective schemes

Collective schemes are organizations offering their services to companies subject to producer responsibility. Statutory requirements for collective schemes are that they must be registered with DPA-System with a name, a postal and electronic address and a telephone number, but there is no requirement for a CVR number. There is no statutory requirement as to organization of a collective scheme, including ownership, corporate form, statutes, nationality, physical location or services offered.

The collective schemes decide on prices and settlement terms etc. for the services provided.

The collective schemes differ widely among them in relation to purpose, corporate form and cooperation with affiliated producers.

The collective schemes can choose to cooperate with a producer or reject affiliation on commercial grounds. If a producer cannot reach an agreement with a collective scheme this producer must assume his producer responsibility individually.

By contrast to DPA-System collective schemes are not subject to the Danish Public Administration Act, the Act on Public Access to Documents in Administrative Files and supervision from the Environmental Protection Agency. To the extent that a collective scheme has assumed obligations on behalf of producers under the WEEE Order or the Battery Order the collective scheme is, however, subject to supervision under the relevant provisions.

Tasks under the producer responsibility system for WEEE and BAT that a producer may delegate to a collective scheme appear from the WEEE Order and the Battery Order. These tasks are listed in Appendix 3 of this document.

The collective schemes are covered by general competition rules. In case of disputes relating to competition law between producers and collective schemes reference is made to the Danish Competition and Consumer Authority and the general legal system. This also applies to disputes between collective schemes.

## **Appendix 2. Main tasks of DPA-System appearing directly from the Orders**

1. Establish and operate a producer register for producers and importers (in the following referred to as producers) covered by producer responsibility.
2. Receive and register annual reports from producers.
3. Receive and register data from SKAT (Danish Tax and Customs Administration) in relation to reporting of portable batteries.
4. Receive and register data concerning collective schemes operating in Denmark.
5. Receive and register data concerning authorised representatives in Denmark.
6. Receive and register data from local authorities concerning establishment and discontinuation of municipal collection sites for WEEE and waste portable batteries.
7. Receive local authorities' reports on required collection equipment to be supplied by producers.
8. Receive and register agreements entered by local authorities and collective schemes concerning collection sites, collection equipment, issues relating to collection etc.
9. Receive and register data on reception centres for WEEE established by collective schemes.
10. Receive and register data on reception centres for automotive batteries established by collective schemes.
11. Receive and register data on reception centres for automotive batteries established by producers.
12. Calculate and administer allocation of WEEE and waste portable batteries.
13. Calculate, notify and administer provision of financial guarantee for producers and collective schemes.
14. On the DPA-System website publish parts of information reported by producers, local authorities and collective schemes, as well as allocation of WEEE and waste portable batteries.
15. Calculate and levy fees from producers in pursuance of the law.
16. Report selected data to the Environmental Protection Agency according to the Agency's directions.
17. Decide on the following issues:
  - Whether a company is subject to producer responsibility, i.e. whether it is a producer or an importer.
  - Whether equipment (WEEE), batteries (BAT) or vehicles (ELV) are subject to producer responsibility and decide on the categories.
  - Whether a product (WEEE) is destined for end-users in households or professional users.

### **Appendix 3. Tasks that collective schemes can assume on behalf of producers**

1. Register producers in the producer register of DPA-System if the producer has delegated this task to a collective scheme.
2. Undertake annual reporting to DPA-System if the producer has delegated this task to a collective scheme.
3. Provide financial guarantee for the quantities of WEEE allocated by DPA-System on behalf of producers that have delegated collection of WEEE to the collective scheme.
4. Enter special agreements with local authorities concerning special forms of collection, pick-up and separation of WEEE and waste portable batteries and report these agreements to DPA-System.
5. Collect and treat WEEE and waste portable batteries on behalf of producers that have delegated this task to the collective scheme.
6. Establish own reception centres in the regions and report these to DPA-System.
7. Carry the duty of information to users of portable batteries.
8. Pay statutory fees to DPA-System for producers that have authorized a collective scheme to do so by registering it with DPA-System.