



## **Assessing the Interpretation of the Producer Definition under Directive 2002/96/EC (WEEE)**

- **for the Purpose of Transposition in National Laws  
and**
- **for the Purpose of Enforcement at National Levels**

### **What perspective to take?**

- **Perspective of Member States?**
- **Perspective of the European Single Market?**

**It is not an “either ... or”  
it is**

**both the perspective of Member States  
and the perspective of the European Single Market**



## Interpretation of the « producer » Definition

- Principle of **producer responsibility** requires a clear and unambiguous understanding of the « producer »
  - a) to ensure **enforceability** at national level
  - b) To provide **legal certainty** for companies
- **Article 3 (i)** leaves room for interpretation as to the **specific economic operator** and the **specific obligation** to be fulfilled:  
**One product could have several « producers » under article 3(i) WEEE:**  
**This is neither practical nor enforceable**



**Objective: Unique Understanding of  
«producer» in all EU member states**

**The way forward:**

**Assessment of specific functions of the  
economic operators**



- **places a product**
  - **on the Community market**
  - **on his own behalf**
- **has overall control**
- **has competence to take responsibility for the product**





## 2. EU-Importer importing from a 3rd country

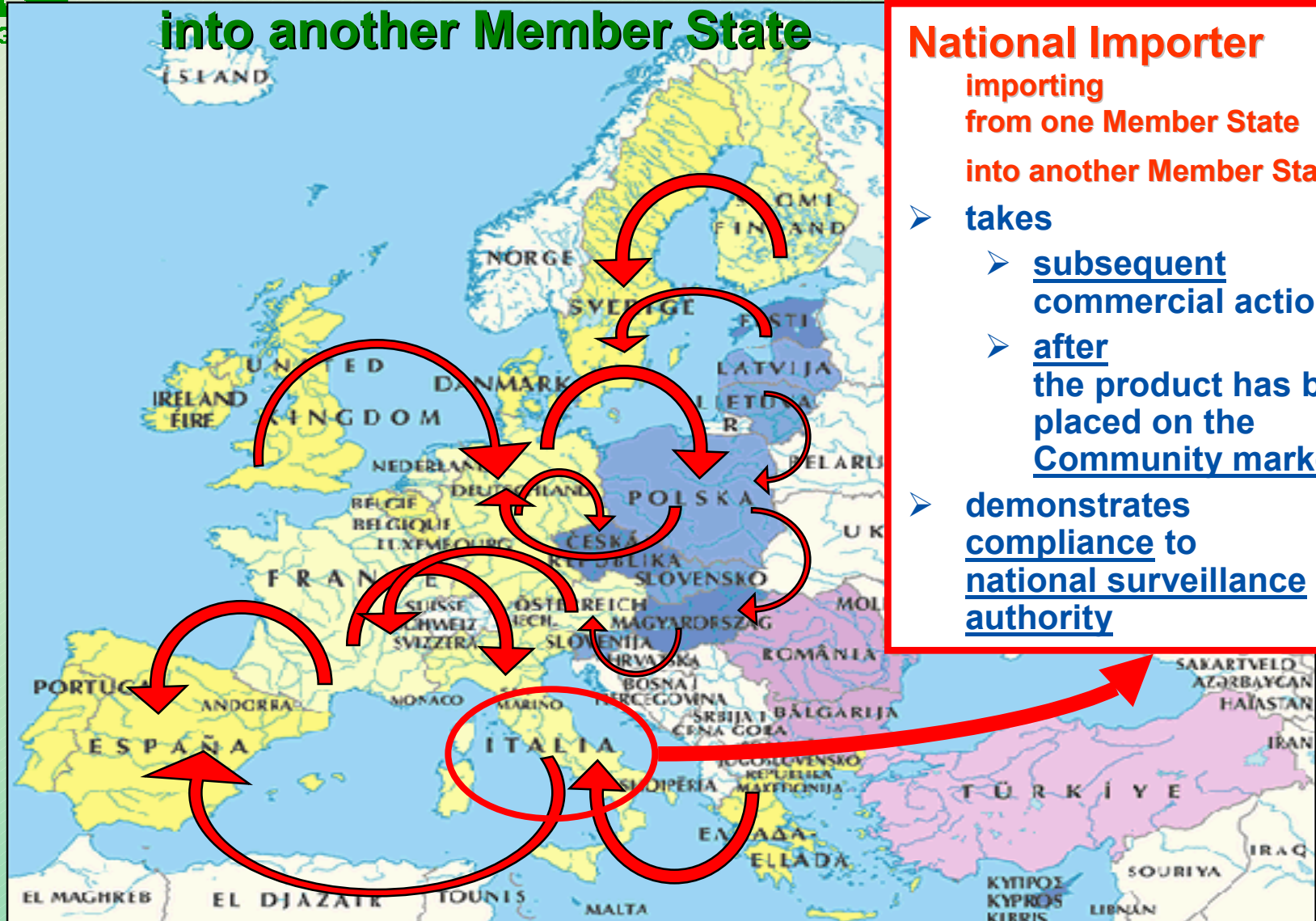
### EU-Importer importing from a 3rd country

- places a product
  - on the Community market
  - from a third country
- assumes the responsibilities placed on the manufacturer  
i. e.:
  - has overall control
  - has competence to take responsibility for the product



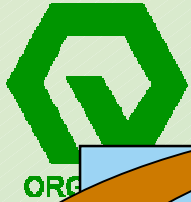


### 3. National Importer importing from one Member State into another Member State

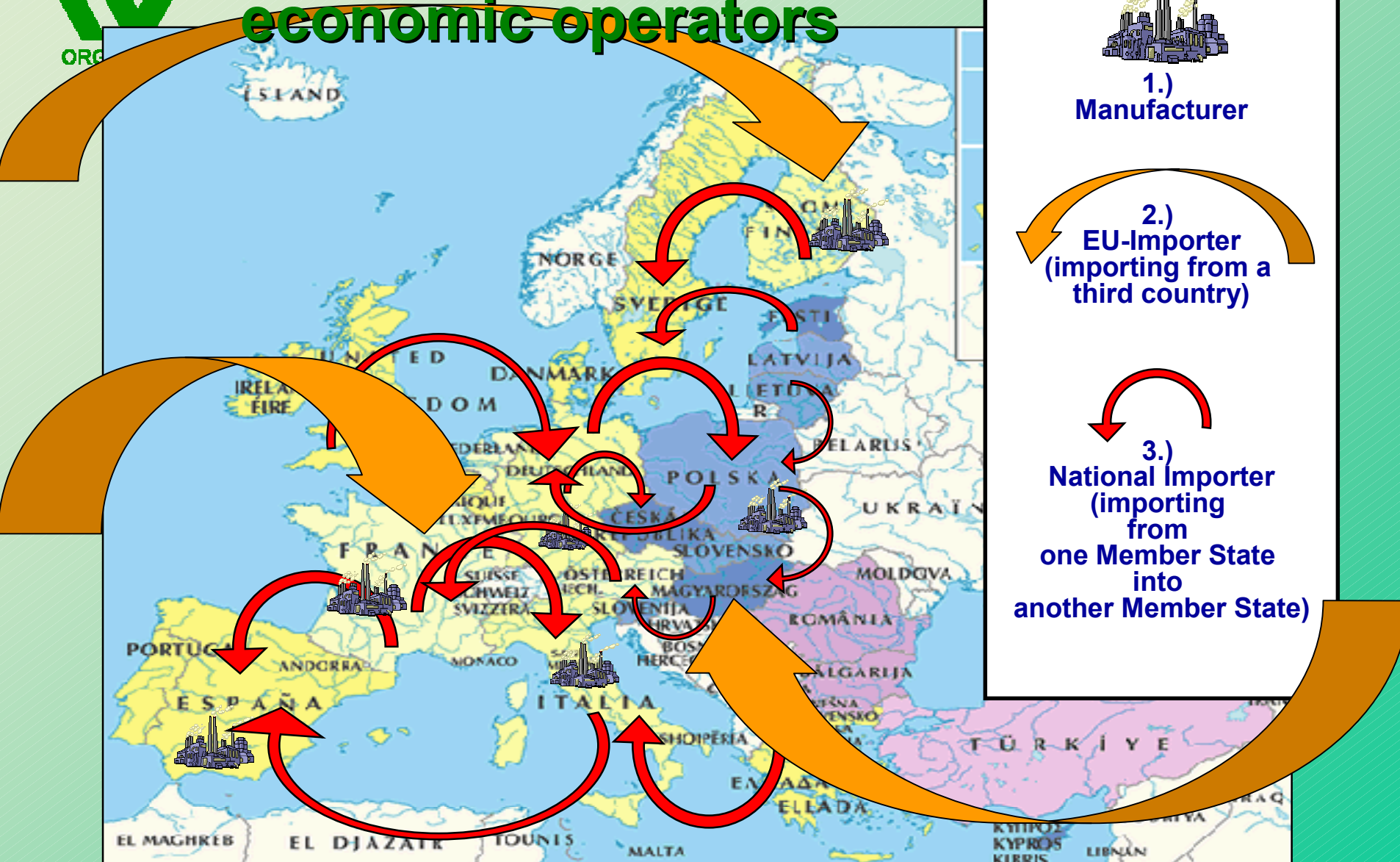


**National Importer**  
importing  
from one Member State  
into another Member State

- takes
  - subsequent  
commercial actions
  - after  
the product has been  
placed on the  
Community market
- demonstrates  
compliance to  
national surveillance  
authority



# Three specific functions of economic operators







# Objective: Unique Understanding of «producer» in all EU member states

1. Manufacturer
2. EU-Importer (importing from a 3rd country)
3. National Importer  
(«importing» from one Member State into another Member State)

Note: One single company could fulfill several, or all of these functions

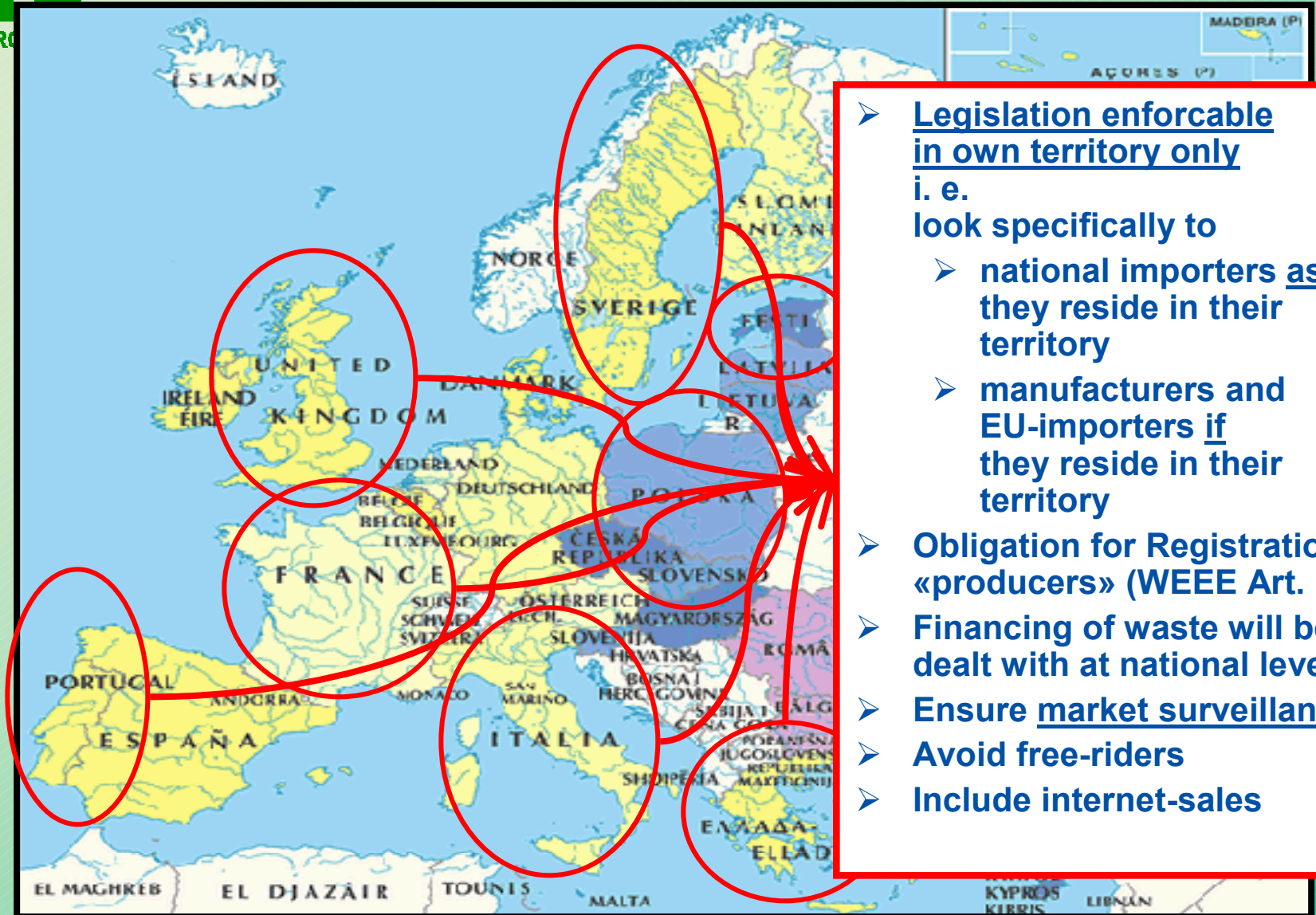
**The way forward:**

These three **specific functions** should be preferred to the ambiguous «**producer**»





# Perspective of Member States



- Legislation enforceable in own territory only  
i. e.  
look specifically to
  - national importers as they reside in their territory
  - manufacturers and EU-importers if they reside in their territory
- Obligation for Registration of «producers» (WEEE Art. 12)
- Financing of waste will be dealt with at national level
- Ensure market surveillance
- Avoid free-riders
- Include internet-sales



# Perspective of the European Single Market

- Once placed on the Single Market - accepted everywhere
- CE-marking, «New approach»
- Free movement of goods
- No barriers to trade
- No national borders for goods
- No customs and excise
- Include internet-sales



# What perspective to prefer?

**It is not an “either ... or”  
it is “both ... and” !**

- **Perspective of Member States**
  - Legislation enforcable in own territory only i. e. look specifically to
    - national importers as they reside in their territory
    - manufacturers and EU-importers if they reside in their territory
  - Obligation for Registration of «producers» (WEEE Art. 12)
  - Financing of waste will be dealt with at national level
  - Ensure market surveillance
  - Avoid free-riders
- **Perspective of the European Single Market**
  - Free movement of goods
  - No barriers to trade, no «re-labelling»
  - CE-marking, «New approach»



## “Put on the market” (Art 4.1 RoHS)

**“Placing on the market is the initial action of **making a product available for the first time on the Community market**, with a view to distribution or use in the Community. Making available can be either for payment or free of charge.”**

[Source: Clause 2.3 of “Guide to the implementation of directives based on the New Approach and the Global Approach”]

➡ **This definition has been successfully applied to other Article 95 Directives.**



# ANNEX

**European Commission:  
Guide to the implementation of  
directives based on the New  
Approach and the Global Approach**



# European Commission: Guide to the implementation of directives based on the New Approach and the Global Approach

## 1. Manufacturer

« is the person who is responsible for designing and manufacturing a product with a view to **placing it on the Community market on his own behalf**. The manufacturer has an obligation to ensure that a product intended to be placed on the Community market is **designed and manufactured** and its conformity assessed to the essential requirements in accordance with the provisions of the applicable New Approach directives. The manufacturer may use finished products, ready made spare parts or components, or may subcontract these tasks. However, he **must always retain the overall control and have the necessary competence to take the responsibility for the product** ».



# European Commission: Guide to the implementation of directives based on the New Approach and the Global Approach

## 2. Importer (EU-Importer importing from a 3rd country)

An importer « – a person responsible for **placing on the market**- is any legal person established in the Community who places a product **from a third country** on the Community market. The importer must ensure that he is able to provide the market surveillance authority with the necessary information regarding the product, where the manufacturer is not established in the Community, and has no authorised representative in the Community. The natural or legal person who imports a product into the Community may, in some situations, be **considered as the person who must assume the responsibilities placed on the manufacturer** according to the applicable New Approach directives ».



# European Commission: Guide to the implementation of directives based on the New Approach and the Global Approach

## **3. National Importer importing from one Member State into another Member State (in the Guide named “Distributor”)**

« is to be considered as any natural or legal person in the supply chain who takes **subsequent commercial actions after the product has been placed on the Community market.** The distributor shall act with due care in order NOT to place clearly non-compliant products on the Community market. He shall also be capable of **demonstrating this to the national surveillance authority** ».





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# **Orgalime**

**« *Speaking for European Engineering Industries* »**

## **Facts and figures**

**34 national trade federations of 23 European countries**

**We represent some 130.000 companies  
employing some 7.3 billion people and  
accounting for 1200 billion Euro in the GNP and a  
third of the manufactured exports of the  
European Union.**

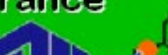
**Orgalime represents almost all sectors  
covered by WEEE and RoHS**



Ireland  
Great Britain



FME CVAIWDMA



Norway



Sweden

Denmark

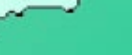


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Germany

FECEIP



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Industries  
of Finland



Finland

Estonia



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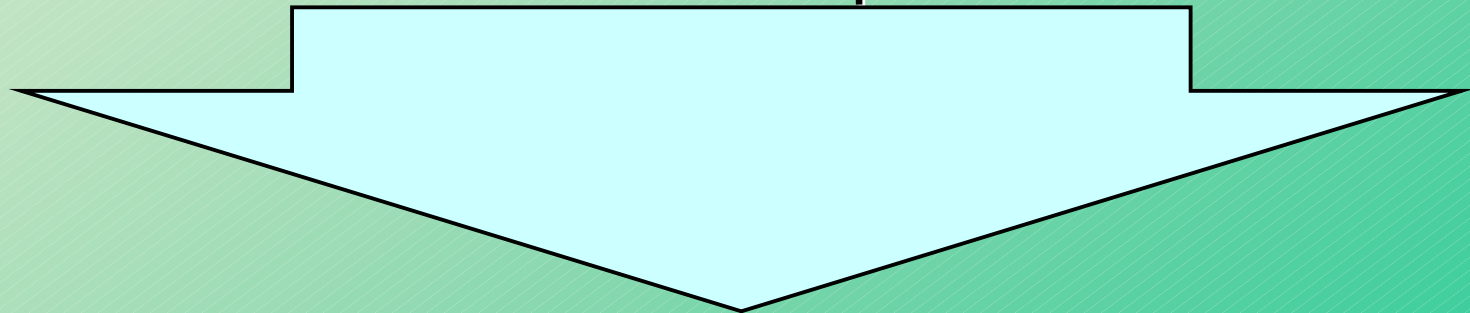
AINMAP



# WHY is industry still working on WEEE/RoHS at European level?

## Aim of legislation

- Preserve, protect and improve quality of the environment
- Avoid disparities in the financial burden on economic operators



- Harmonization of legislation of Member States