# Questions and answers in relation to information to be provided on consumer electronics products (Part 2)

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Following up the February 2018 issue of Market Place, I would now like to bring to the attention of the readers some new and recurring questions as regards the ***indications to be included with electrical and electronic equipment***, recently submitted to me by ANDEC's members as part of the legal advice service provided by the Association. I wish everyone a good read!

- **Question:**

Information on the treatment of WEEE that producers must provide to the recoverers

*We are writing in regard to Article 38, paragraph 2 letter d) of Legislative Decree No. 49 of 14 March 2014, and more precisely on the information that producers must provide to the recoverers on the treatment of their products at the end of their life cycle and the penalties provided for in case of non-compliance. In particular, we would like confirmation about the methods for transmitting such information: Is it the producer's responsibility to provide this information? To whom should it be sent? In what form should it be provided?*

*Is it foreseen that the Collective Scheme to which the producer is a member fulfils this obligation on behalf of the producer?*

**Answer:** The sanctioning rule mentioned by you refers to Article 27 of Legislative Decree 49/2014, which in fact obliges producers to provide to the recoverers information for the proper treatment of their end-of-life products.

This is a requirement recently reaffirmed by the Environment Ministerial Decree No. 140 of 10 June 2016 (Ecodesign for environmentally friendly EEE), which producers have, however, already met for years through an agreement between the WEEE Coordination Centre (i.e. the consortium made up of all Italian collective schemes), Producers' Associations (including ANDEC) and Recoverers' Associations (including ASSORAE and others), establishing that the producers would have made available this information to the treatment facilities via the WEEE Coordination Centre by means of **updated data sheets by product type**, downloadable from the WEEE Coordination Centre's website: **https://www.cdcraee.it/GetPage.pub_do?id=2ca9809556b17c340156b19f699e0009**

It would thus appear that your company, if it has already joined a collective scheme (as it could not practicably be otherwise) is not required to individually do anything in this regard.

- **Question**

Indication of the product's origin

*We would like to know if we can eliminate from the packaging of our products of EU-origin, standardized for all European countries, the following wording: "Manufactured by .....; assembled in the following country: .....".*

**Answer:** In the present case, there is no general rule requiring to indicate the country in which the product is manufactured (provided of course that in the packaging or presentation there is no indication that might imply that the equipment is manufactured in Italy: in such case the provisions of Legislative Decree 135/2009, converted into Law 166/2009, would apply and it would be necessary to indicate the country of manufacture).

I would like, however, to point out the following:

(1) The EMC, RED and LVD Directives require producers to place on the product (or if this is not objectively possible on the packaging) their name, trademark and address at which they could be reached.

(2) The Madrid Agreement of 14 April 1891, implemented in Italy by Presidential Decree No. 656 of 26/02/1968, prohibits the use of *false or deceptive indications* of source on products (Article 1.1). This provision is interpreted by the supervisory authorities in the sense that, for example, a multinational company 'A' having its head office in Japan and its subsidiary 'B' (production plant) in China, must indicate, as a producer, on the product manufactured by the subsidiary 'B', the company 'B' and the related address in China and not the company 'A' with address in Japan, as this last indication would, in fact, constitute a false/deceptive indication on the origin of the product and, as such, punishable.

- **Question**

Product Safety Information

*With reference to your answer to our previous question ("is it acceptable to provide the instructions and safety information only in electronic/digital format on a tangible medium included in the product's packaging"), to which you replied by pointing out that: "A clear distinction must be drawn between (a) safety information and (b) instructions on the use of the product. In fact, unlike the information on product safety, which should be in paper format, nothing prohibits, save for specific rules to the contrary, to provide the instructions for use on an electronic medium or recording device that accompanies the product, as long as a hard copy is made available upon request by the user. See in this regard the Blue Guide on the implementation of EU product rules, published in the Official Journal of the European Union C 272 of 26 July 2016, note No. 100, page C 272/30".*

*While I fully understand that the product safety information must be in 'paper format', could you please tell me if there are specific requirements laying down detailed rules for providing this information? Let me try to explain: would it make any difference if this information (for example that concerning the SAR (Specific Absorption Rate) values for smartphones, tablets and similar devices)*

*were detailed in a paper manual, quick guide (or similar) included in the packaging, instead of directly (and solely) on the product packaging?*

**Answer:** I am not aware of specific indications requiring, in the case of the products in question, to indicate the instructions for use directly and exclusively on the packaging of the products themselves; indeed, I would also have strong doubts about the soundness of such a solution, given that the packaging is often disposed of, while the documentation that accompanies the products is generally kept by the prudent buyer. In this regard, I would like to mention one of my articles dealing with the indications to be provided on products (EEE), downloadable (in Italian) from my firm's website: http://www.avvocatoiorio.it/wp-content/uploads/2017/03/Indicazioni-su-etichette-MP-giugno-2015.pdf

May I remind you that the relevant rule is Article 16 point 1, letters d) and f) of the Italian Consumer Code (Legislative Decree 206/2005).

As for the SAR provisions, the relevant law is in my opinion Article 12 of the sectoral framework law (Law 36/2001), while the current technical standard should be IEC62209-1:2016, whose text I do not presently have available, but which would not seem (the use of the conditional tense is deliberate) to cover this issue.

In conclusion, as a summary research, there does not seem to be any provision imposing specific requirements such as those suggested by you.

- **Question**

When is the CE marking required?

*We are importing from a non-EU country a power supply kit for LED lighting systems to be used inside a light source, made by our customer, which will be sold after the entire product has undergone the relevant CE conformity tests. In short, the power supply kit is sold by us to our customer as a complete product, when it is in fact a component of a product which incorporates it and whose CE conformity rests with our customer. who places on it his own trademark.*

*In this particular case, is it obligatory for our company (which affixes its own trademark) to place the CE marking on the power supply kit with related costs and red tape? Would it be the same if we were not to affix our own trademark on it? Is there a technical terminology to be used in the sales documentation (invoices of the non-EU manufacturer, invoices to our customers, product packaging, etc.) that would result in defining the item as a spare part with a view to a possible exclusion?*

*Moreover, since we have been asked by another customer to be able to buy only the electronic board of the aforementioned kit, which, even more so, must be used within a larger product, is it possible in this case to avoid placing the CE marking? In such case, how should the board be defined on the commercial documentation and/or on the product?*

*Is it necessary to provide the indications by means of a label or other wording placed on the product or its packaging indicating that it is a spare part or a component of the final product? Is it necessary in this case to indicate the brand and model of the final product?*

*Finally, one last question: Would it be feasible to ask our client to sign a letter in which he undertakes to use the aforementioned kits or boards exclusively for creating more complex products for which the CE marking certification must be then obtained at his own cost, thus committing himself not to resell the kit as supplied by us? Unless the above does not make this unnecessary.*

**Answer:** The EU harmonization legislation (CE marking and any other related requirements) applies only to 'finished products' (see, for example, the 'Blue Guide' 2016 ed., paragraph 2.1.).

However, it is a matter of establishing when a product can be defined as 'finished' and when it is instead an unfinished product or a mere component part. It is considered that a product is 'finished' when it can perform its own function independently from the more complex product or equipment in which it is incorporated[1]. In a recent document of the WEEE Supervisory and Control Committee (http://www.minambiente.it/sites/default/files/archivio/allegati/rifiuti/Ind_oper_applicaz_DL_49_2014.pdf), valid on this point also for CE regulations purposes, it is specified that *"... by 'independent function'* ***it is meant the attitude of a product to perform its primary function, i.e. that for which it was designed, 'independently' from its assembly/integration into another product or equipment****. Consequently, if the primary function of the component can only be performed following its assembly/integration into another equipment in order to work properly, then the component is excluded from the scope of application of the legislation in question; conversely, if the primary function of the component is independent from the primary function of the EEE for which it was manufactured or that of the EEE repaired, such component is itself an EEE and therefore included within the scope of Article 2 of Legislative Decree 49/2014. For example, the hard disk of a computer is a component if assembled or incorporated within the computer main body, conversely it is an EEE if equipped with its own casing and independent data storage function available without further operations or connections other than simple ones that can be performed by any person".*

In your case, the power supply kit for LED lighting systems seems therefore to be (at least in the light of the limited elements provided and as part of a rough analysis) a finished product, even if designed to be incorporated in other products. .

[1] (a) the EMC Directive applies to any 'Equipment', defined as "*any apparatus or fixed installation*" (Article 3.1), specifying that also "*components or sub-assemblies intended to be integrated into a device by the end user, which may generate electromagnetic interference or whose operation may be affected by such interference*" fall within the scope of the legislation; (b) the LVD Directive applies to 'Electrical Equipment' designed for use within certain voltage limits (also some components are addressed by the Directive, but these do not require the CE marking ); (c) the RED Directive refers to any 'Radio Equipment', for which a detailed definition is given (Article 2).

It is worth noting that, from the point of view of electromagnetic compatibility, ***apparatus which has been placed on the market and which may be incorporated into a fixed installation*** is regulated by a specific provision, i.e. Article. 5 of Legislative Decree 194/2007 (as amended by Legislative Decree 80/2016 following the implementation of the new EMC Directive 2014/30/EU), which states as follows:

*ARTICLE 5 - Fixed installations (**1**)*

***Article 5***

***1. Apparatus which has been made available on the market and which may be incorporated into a fixed installation shall be subject to all relevant provisions for apparatus set out in this Decree. However, the requirements of Articles from 7 to 7-septies and from 9 to 11 shall not be compulsory in the case of apparatus which is intended for incorporation into a particular fixed installation and is otherwise not made available on the market. In such cases, the accompanying documentation shall identify the fixed installation and its electromagnetic compatibility characteristics and shall indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of that installation. The documentation shall also include the information referred to in Article 7-bis, paragraphs 5 and 6, and Article 7-quater, paragraph 3. The good engineering practices referred to in point 2 of Annex I shall be documented and the documentation shall be held by the person or persons responsible at the disposal of the relevant national authorities for inspection for as long as the fixed installation is in operation.***

*(omitted)*

After these necessary clarifications, by examining the Articles mentioned above ("*from 7 to 7-septies and from 9 to 11"*) you will find the indications you are looking for.

The different LVD legislation, i.e. Legislative Decree 86/2016 implementing Directive 2014/35/EU (which too should apply to the kit or, at least, to its power supply) does not contain the distinction referred to in the above Article 5 of Legislative Decree 194/2007, with the consequence that the kit or its individual parts subject to the LVD regulations, if they constitute a finished product, require the CE marking, the Declaration of Conformity and the technical documentation, while, if they do not constitute a finished product, they are excluded from this obligation, without in this case being subject to the specific requirements regarding the documentation addressed above in the case of the EMC legislation.

Finally, I do not believe that there is any " …*technical terminology to be used in the sales documentation (invoices of the non-EU manufacturer, invoices to our customers, product packaging, etc.) that would result in defining the item as a spare part with a view to a possible exclusion …".*

- **Question**

Technical information on the product label

*The customer for whom we are creating an emergency kit for LED lamps designed to come on when the power goes out (product subject to the EMC, LVD and RoHS regulations), requires, for commercial purposes, to have the data on the rating plate in English (e.g. supply voltage, operating temperature, etc.). Unfortunately, however, the available space does not allow to duplicate the data also in Italian. Is it strictly necessary to include on the rating plate also the data in Italian or is it possible to specify it only in English?*

**Answer:** The information must be in Italian, consistently with to the following provisions:

Legislative Decree 86/2016 (LVD):

*"Article 3.5. 7. Manufacturers shall ensure that the electrical equipment is accompanied by instructions and safety information* ***in Italian language****. Such instructions and safety information, as well as any labelling, shall be clear, understandable and intelligible".*

*"Article 5.4 Importers shall ensure that the electrical equipment is accompanied by instructions and safety information* ***in Italian language****".*

*"Article 6.2. Before making electrical equipment available on the market distributors shall verify that the electrical equipment bears the CE marking, that it is accompanied by the required documents and by instructions and safety information in a language which can be easily understood by end-users in the Member State in which the electrical equipment is to be made available on the market, and for the Italian market,* ***in Italian language****…".*