



## Summary of Discussions with the Commission, DG ENV 04.05.2006

### Participants:

Commission	Karolina Fras Marco Onida Liam Cashman Patrick Wegerdt
EGARA:	John Murphy, IMVRA Paul Fox, MVDA Lennart Scharff - EGARA

### 1. Background:

The primary reason for requesting a meeting was related to interpretation of Producer Responsibility where we noted different developments and interpretations being applied in the different countries, with the main focus here being on Ireland, UK and Denmark.

As we see it, these interpretations are not completely in line with the Directive and its “intentions” as laid out in the Guidance document.

### 2. Ireland

#### 2.1 Legislative situation

Here we see a draft legislation where:

ATFs in the producers system, in principle can charge producers if the ELV has no or a negative market value, since 9(10) states as follows:

*“Where an end-of-life vehicle is deposited for appropriate treatment and recovery at an authorised treatment facility in a producer’s national system for the collection of specified vehicles, of that producer’s brand or for which that producer has responsibility, which that producer anticipates will become end-of-life vehicles in the State, and that end-of-life vehicle has no or a negative market value, that producer shall be responsible for meeting the costs incurred by the authorised treatment facility in carrying out the appropriate treatment and recovery of that end-of-life vehicle.”*

- ATFs outside the producers system cannot charge neither producers, nor the last owner/keeper according to 14(1), 14(2) and 16(4)



Further, in Draft Regulation 32, it is stated that the last owner/keeper shall/must deposit his ELV to an ATF in the producer's system.

## **2.2 Contractual arrangements**

Since the legislation not yet is passed, the producer's system has not been put in place, and as far as we in EGARA know, no ATFs have signed contracts with the producer's system.

Basically, IMVRA with is 35 members and the MRAI (metal recyclers association) with their 12 members are – so to say – the only ATFs operated in the country – other that operate, do so without licences/authorisation. Hence, it is estimated that there are currently over 100 illegal ATFs operating in Ireland.

## **3. UK**

### **3.1 Legislative situation**

Here we have a passed legislation:

THE END-OF-LIFE VEHICLES (PRODUCER RESPONSIBILITY) REGULATIONS 2005 - STATUTORY INSTRUMENT 2005, No.263

where:

- There are approx. 1300 ATFs in the UK belonging to two categories: those which belong to the producers' system and those which remain outside this system
- ATFs in the producers system can charge producers if the ELV has no or a negative market value
- ATFs outside the producers system can charge the last owner/keeper

### **3.2 Contractual arrangements**

It appears that out of some approx. 1.300 ATFs in the country, only some 400 have entered into contract with the producer's system – or rather: Systems – since two such systems exist:

- Autogreen, an organisation funded by a few ATF's – predominantly serving GM group
- CarTakeBack, backed by a large Shredder group – The rest of ATFs which signed contracts with producers

Some ATFs have signed contracts with both systems.

This leaves some 900 ATFs that have not chosen to enter into a contract. It is possible that out of the approx. 2.000.000 ELVs in the UK, 50% may be received by ATFs in the producer's systems , and 50% by ATFs not in the producer's systems.



Further, even though ATFs in the systems, in principle, can charge producers “treatment costs”, the contracts say that ATFs will not charge the producers for a given period of time. As far as we know, this principle of zero costs for producers should be respected until 2015.

In the guidance notes to the legislation it is stipulated that:

*For the purposes of regulation 10(6), which expresses the producer’s responsibility for meeting the costs of providing free take-back of a vehicle with no market value, it is anticipated that such vehicles would be returned to an authorised treatment facility or collection point that had established a contractual relationship with the producer. The valuation of a vehicle would be the subject of negotiations between the authorised treatment facility or collection point and the producer who put the vehicle on the market. Such negotiations would be for the parties concerned, but DTI would expect negotiations to take into account the likely cost of treatment (depollution, dismantling and issue of the Certificate of Destruction (CoD)) and recovery and recycling, and the projected income from reused elements and materials recovered from dismantling, shredding and other recovery operations.*

As far as we know, there is no evidence about that the above mentioned calculations/negotiations have taken place – and we have not seen “a calculation model” published. It more looks as if ATFs just have signed not really knowing exactly what they sign for and/or just by believing that they would be better off inside than outside the producer’s system(s).

#### **4. The Commission’s interpretation of producer responsibility.**

##### **4.1 General**

In general it was expressed that:

It follows from the provisions made under Article 6 of the directive that:

- (Member States) must ensure that all ELVs go to ATFs
- ATFs must accept an ELV when delivered to them
- ATFs must issue CODs

It follows from the provisions made in Article 5, especially article 5.4, that:

*Member States shall take the necessary measures to ensure that the delivery of the vehicle to an authorised treatment facility in accordance with paragraph 3 occurs without any cost for the last holder and/or owner as a result of the vehicle’s having no or a negative market value. Member States shall take the necessary measures to ensure that producers meet all, or a significant part of, the costs of the implementation of this measure.*



*Member States may provide that the delivery of ELV is not fully free of charge if the ELV does not contain the essential components of a vehicle, in particular the engine and the coachwork, or contains waste which has been added to the ELV.*

This means, that:

- The last owner/keeper should be able to deliver free of charge to any ATF, whether in the producer's system or not – and he should never be charged anything (unless the ELV does not contain the essential components of a vehicle, in particular the engine and the coachwork, or contains waste which has been added to the ELV)
- If the ELV has a negative or no market value, the producers will have to meet all, or a significant part of, the costs
- It might be argued that the costs should be met at all ATFs whether or not they are in a producer's network
- Producer responsibility – i.e. cost to be met, are only cost for “operations” stimulating re-use and recycling, whereas “operations” required by authorities, primarily administrative work, reporting etc., do not form part of the producer responsibility.

Based on this, the Commission officials expressed a view that:

- The Draft Irish legislation contains provisions which may lead to unfair competition between contracted ATFs and non-contracted ATFs
- **That if the cost of receiving and treating an ELV are higher than the market value of the ELV and if a significant part of these costs were not borne by the producer, that may constitute a case of non-conformity with the Directive.**
- **A binding interpretation of the provisions of the Directive is ultimately the matter for the European Court of Justice**

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