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MAIN PRIORITIES AND PROPOSALS FOR FURTHER PROCEEDINGS ON WEEE RECAST

EXECUTIVE SUMMARY

Following the vote of the European Parliament's Environment Committee on 22 June 2010 on the draft report of Rapporteur Florenz and the Council's progress report of 11 June 2010 on the Commission's proposal for a recast Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) and in view of the European institutions' further proceedings on the matter, Orgalime would like to provide its main priorities and proposals for the way forward. These aim at ensuring sustainable legislation, which will both take due account of the considerable investment made by producers for the setting up of WEEE management schemes in record time, while bringing about those adjustments needed to improve the existing legislation for the environment and for producers whether large or small.

Considering that several substantial proposals for modifications to the initial Commission proposal are suggested by the EP or the Council, Orgalime is doubtful about the feasibility of concluding discussions between the institutions in first reading and invites the institutions to take the necessary time to arrive at quality legislation, which is coherent, enforceable and workable in practice.

Producers are committed to the environmental objectives of WEEE, and in particular to treat 100% of WEEE returned to them. We believe that the following general aspects are essential for the recast:

- Making WEEE management a success in practice requires clearly defined obligations for all actors in the multi-stakeholder process of WEEE management.
- We ask regulators to stick with the remits of a recast, namely to iron out shortcomings of the implementation process of initial WEEE Directive while building upon its elements that have proven reliable and are delivering.
- In line with Better/Smart Regulation principles, the recast should not introduce substantial changes without proper impact assessment and interinstitutional agreement.

MAIN PRIORITIES FOR THE FURTHER PROCEEDINGS

The priority issues for producers of electrical and electronic equipment (EEE) for the further proceedings are the following:

- A harmonised **scope** in the WEEE Directive itself that improves legal certainty and predictability and is based on environmental relevance of included product groups

Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

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- A **collection rate** that is ambitious, but at the same time workable and realistic
- **Set limits to the rules for financing of WEEE collection:** Extending producer responsibility to financing of collection from private households has no demonstrated environmental benefit and would make producers responsible for activities they cannot control or influence.
- Better harmonised **registration and reporting** procedures
- Drying out illegal **waste shipments**
- Better **enforcement** of the Directive

CONCRETE INDUSTRY PROPOSALS FOR SHAPING WEEE

- **Scope:**
 - Stick with a clearly defined scope of ten categories of WEEE covered by the Directive – the consequences of the proposal for an open scope have not been subject of an impact assessment
 - Introduce a distinct but comprehensive set of scope exclusions, including: military equipment; equipment which is part of another type of equipment not within the scope of WEEE; fixed installations; large scale industrial tools; non road mobile machinery; any means of transport; photovoltaic modules; fixed parts of a building; filament light bulbs and implanted and infected medical devices
 - Reject any illustrative list of product examples covered by the Directive, since such a list can never be complete or follow technological developments in a timely manner.
- **Collection Rate:**
 - Introduce a new collection rate on Member States based on “WEEE generated”
 - Avoid too descriptive provisions on how to organise WEEE take back in practice, especially for very small volume wastes via distributors, since such details are to be defined at national level due to the different structures of retailers and differences in implementation schemes
- **Registration and Producer Definition:**
 - Shape WEEE registration via better harmonised registration and reporting formats for electronic registration or the clarification that it is not necessary for a company to have a legal seat in each Member State
 - Introduce a WEEE resident agent for the purpose of strengthening enforcement
 - Harmonise the Directive to the extent possible (European approach) without compromising effective enforcement in Member States (national approach), especially in the area of producer definition and registration
 - Clarify that a distributor making equipment available for the first time on a national territory from another Member State inside the Community (intra-community trade) either concludes an agreement with the producer or provides the registration and the financing of the management of WEEE arising from this equipment himself
 - Delete article 16.4 to eliminate the erroneous mix of registration and take back obligations
- **Standardisation:**
 - Support proposals to develop harmonised standards for collection, storage, transport, treatment recycling and repair of WEEE
- **Reuse:**
 - Acknowledge that beneficial re-use of appliances can only take place before a product enters a collection facility
 - Follow the Commission’s proposal for including reuse targets of whole appliances within the recycling targets instead of introducing separate reuse targets
- **Waste Shipment:**
 - Prohibit and strengthen enforcement measures against illegal exports of WEEE,

but allow legal shipments of WEEE for the purpose of repairing professional goods also beyond the warranty period, since such legal shipments after the warranty period are equally important to avoid that an appliance turns into waste earlier than necessary

- **Product Design:**

- Respect the preparatory study process of the Eco Design Directive 2009/125/EC prior to setting eco design requirements on any environmental aspect, including for possible requirements facilitating re-use, dismantling or recovery of WEEE

We specify our concerns and concrete proposals in more detail hereafter:

1. SCOPE

Concerns:

- The consequences of the proposal for an open scope remain unknown today. Carrying out an impact assessment before taking a decision is not only a prerequisite in terms of Better Regulation, it will help to close knowledge gaps and avoid undesired negative consequences, such as on SMEs, while identifying areas where real environmental gains can be achieved.
- Scope exclusions cannot compensate for the proposal for an open scope. Where it is however already indicated today that negative consequences can be expected or that the inclusion is not justified on environmental grounds, scope exclusions should be granted. This is of particular relevance for Business-to Business products (B2B) that are used in industrial or professional relationships: firstly, their environmental relevance has not been assessed as significant in the Commission's preparatory studies, and secondly, such equipment does not end up in the municipal waste stream. They represent a separate waste stream that is already taken care of.
- Scope exclusions require proper definitions to secure fair competition and legal certainty. Where they exist, they should be based upon definitions provided in existing legislation applying on EEE.
- Proposing that the Commission can immediately propose new scope exclusions can also not compensate for the proposal for an open scope. It would not provide for sufficient predictability for manufacturers if their products would be in or out of the scope.
- There are inconsistencies in articles 2.3 and annex IB as voted by the ENVI Committee: certain equipment (such as large electrical and electronic industrial tools and machinery, large appliances generating or transferring current or large measuring instruments and installations) is included in the new annex I.B illustrative list of product examples, while such equipment has been granted an exclusion via art.2.3.
- We are concerned with the proposal to reduce the product categories listed in annex I from ten to five or six. When defining the scope, it is primarily relevant to look at the "placing on the market" of the new appliance to ensure that each producer fulfils the requirements for his products at this very moment and that thereby a level playing field and fair competition is secured. How end-of-pipe collection may be organised in practice at a much later stage is of secondary relevance, including because products change quickly and what appears an appropriate number/structure of containers today may not be appropriate tomorrow. Therefore: for measuring recycling/recovery targets a structure of 5-6 categories may be appropriate. However, for determining the scope of the Directive they are not. (Additional remark: some claim that collection at collection facilities would happen in practice via containers for these 5-6 categories. However, the number of containers is not identical in all collection facilities nor in all Member States.) It is for this reason we advocate for maintaining the existing ten categories listed in annex I of the WEEE Directive.

Proposals:

- **Article 2.1 should read as follows:**
“This Directive shall apply to electrical and electronic equipment falling under the categories set out in Annex I.A of this Directive and to the WEEE generated by such equipment.”
- **The existing annex I of the WEEE Directive should be maintained**
- **Art. 2.3 should include at least the following scope exclusions:**
 - equipment which is part of another type of equipment outside the scope
 - fixed installations
 - large scale stationary industrial tools
 - mobile machinery
 - any means of transport
 - fixed parts of a building
 - filament light bulbs
 - implanted and infected medical device
- **Support EP amendments 2, 13, 14, 15, 16, 18, 19, 20, 21, 22 and 23 of the Report of Rapporteur Florenz**
- **Reject EP amendments 12, 78 and 79 of the Report of Rapporteur Florenz**
- **In line with the Commission’s F.A.Q.s guidance document, the term “dependent” shall be defined as follows in article 2:**
“Dependent means that the equipment needs electricity as its primary energy to fulfil its basic function.”

2. COLLECTION RATE**Concerns:**

- The Commission proposal for a new collection rate on producers based on sales volumes is unrealistic and does not further the environmental objectives of the WEEE Directive: producers do not have legal enforcement or control powers to oblige private and professional users of EEE to return their used and end of life appliances to them.
- The proposals of the European Parliament that introduce a new collection rate that applies on Member States are supported by us, since, due to their enforcement powers, Member States are the only ones that can manage the multi-WEEE stakeholder process.
- We also support changing the reference for the calculation of the target from “placed on the market” to “WEEE generated”. We consider this more workable as it recognises the practice of WEEE collection as a multiple stakeholder process.
- We are concerned with the EP Environment Committee proposal to put in place collection and awareness schemes for very small waste via distributors, since these provisions are too descriptive on how to organise WEEE take back in practice and should be defined at national level due to the different structures of retailers.
- Also, setting a separate target for small volume categories does not solve the collection problems existing for these categories. These can only be solved by taking the multiple stakeholder approach into account and making each actor involved respect the spirit and letter of the Directive.

Proposals:

- **Support EP amendments 3, 4, 25, 26, 28, 29, 30, 31 and 55 of the Report of Rapporteur Florenz**
- **Reject EP amendments 32, 53 and 54 of the Report of Rapporteur Florenz**
- **Reject Commission and Council proposals for article 7.1**

3. FINANCING OF COLLECTION FROM PRIVATE HOUSEHOLDS

Concerns:

- Industry remains opposed to any suggestion that producers should be made financially responsible for collection of waste from the doorstep of private households to collection points for multiple reasons:
 - There is no environmental benefit in shifting current collection costs to producers by making producer responsibility start at the door of private households.
 - Producers cannot be made financially responsible for activities, which they cannot influence or control. We believe that such a change will only lead to higher costs of WEEE management for society as a whole.
 - The proposal cannot avoid “leakage” and does not give producers access to WEEE.
 - There is no need to further harmonise producer financing for the purpose of a level playing field.
 - Giving a quasi blank cheque to municipalities to shift costs from general taxpayers to consumers of EEE (polluter pays) will make total costs for WEEE management rise considerably. It cannot be expected that general waste taxes would decrease.
- The European Parliament proposes to raise sufficient financial means from polluters, including producers, but not the general tax payer. These proposals still raise our concerns due to the above mentioned aspects.
- While the visible fee cannot compensate for any extended financing obligation, it may be a helpful to show costs to consumers and thereby raise awareness. The option of using a visible fee should therefore be maintained.
- We also remain concerned with proposals of the EP Environment Committee that producers shall report on the financing and costs of collection, treatment and disposal, since such proposals force making confidential business information publically available, especially for individual compliance schemes, and thereby create unfair competition.

Proposals:

- **Support EP amendments 6, 49 and 50 of the Report of Rapporteur Florenz**
- **Reject EP amendments 7, 47, 51 and 52 of the Report of Rapporteur Florenz**
- **Article 12.1 should read as follows:**
“Member States shall encourage that producers provide at least for the financing of collection, treatment, recovery and environmentally sound disposal of WEEE from private households deposited at collection facilities set up under article 5 (2).”
- **Maintain Commission proposal for article 14.1**

4. REGISTRATION AND PRODUCER DEFINITION

Concerns:

- When considering harmonising the definition of producer as proposed in article 3(j) of the WEEE recast proposal at European level, one needs to acknowledge the specific obligations arising from the WEEE Directive, namely that registration as well as financing of collection and recovery are not characteristics of products (e.g. composition, ingredients, environmental impact), but represent additional obligations which have to be fulfilled at national level exclusively (i.e.: in the absence of a harmonised European waste internal market and for the purpose of carrying out effective market surveillance and enforcement activities).
Therefore, in the case of WEEE, Member States need to be allowed to impose additional obligations on individual and legal persons who market devices for the first time at Member States level (as confirmed in a letter of Mr Mäkela, Director DG

Environment, 15 June 2005 in conjunction with a letter sent by Mr Prodi, President of Commission, 26 July 2004).

Without the possibility to enact such obligations, all collection structures and requirements for registration in Europe would only be executable on producers who are physically acting in the territory of a member state, but not on intra-European trading companies, thereby creating free riding and unfair competition.

Proposals:

- **Support EP amendments 9, 17, 57, 58, 59 and 60 of the Report of Rapporteur Florenz**
- **Reject EP amendment 61 of the Report of Rapporteur Florenz**
- **Regarding the definition of “producer” in article 3j, Orgalime sees the following two alternatives for the way forward to secure a maximum level of harmonisation in the Directive without compromising effective enforcement in Member States:**
 - **PREFERRED OPTION: the producer remains defined as today**, i.e.: as the person who places the EEE on the **national market of a Member State**. Consequently, also the definitions of “placing on the market” and “making available” would have to be national.
 - **ALTERNATIVELY: The European producer definition provided in art. 3.j of the Commission proposal is taken as a basis and amended by the introduction of a “resident WEEE agent” for those obligations that occur at national level.** Obligations occurring at national level are those resulting from articles 5, 7, 8, 11, 12, 13 and 16.

In any case, there needs to be clarification:

- **in art. 3j** that “*Any distributor who sells electrical and electronic equipment from a non registered producer or WEEE representative shall be deemed a producer*”, **AND**
- **in art. 16** that “*a distributor making equipment available for the first time on a national territory from another Member State inside the Community (intra-community trade) either concludes an agreement with the producer or provides the registration and the financing of the management of WEEE arising from this equipment himself*”.

The so-modified alternative definition of “producer” would then read as follows:

*“Art.3(i)‘**producer**’ means any natural or legal person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts:*

*(i) manufactures electrical and electronic equipment under his own name or trademark, or has electrical and electronic equipment designed or manufactured and **places on the market** that electronic equipment under his name or trade mark,*

(ii) resells under his own name or trademark equipment produced by other suppliers, a reseller not being regarded as the ‘producer’ if the brand of the producer appears on the equipment, as provided for in sub-point (i), or

(iii) is established within the Community and places electrical and electronic equipment from a third country on a professional basis onto the Community Market

(iv) places as WEEE representative electrical and electronic equipment for the first time onto the market of a member state from another member state inside the Community (intra-Community trade)

Where the producer in the meaning of subpoints (i) to (iii) is not established in a Member State, that Member State shall allow that producer to appoint a WEEE representative as the person to act on his behalf in relation to WEEE related tasks in that Member State.

Any distributor who sells electrical and electronic equipment from a non registered producer or WEEE representative shall be deemed a producer within the meaning of subpoints (i) to (iv).

Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a 'producer' unless he also acts as a producer within the meaning of subpoints (i) - (iv)"

A new recital reading as follows could be added:

“(New) For the practical implementation, it must be possible for Member States to identify WEEE representatives as the natural or legal persons who are making electrical and electronic equipment available onto their national markets for the first time from another member state inside the Community (intra-community trade). Therefore, Member States should put in place proportionate provisions that allow them to identify these WEEE representatives and have the possibility to ask them to fulfill WEEE related tasks arising from articles 5, 7, 8, 11, 12, 13, 16 in that Member State. In particular, member states shall have the possibility to ask such persons to provide the registration and the financing of the management of WEEE arising from their sales in that member state, since the financing and registration obligation arises at the level of the member state.”

5. STANDARDISATION

Concerns:

- Developing harmonised collection, treatment and recycling standards can contribute to the realisation of the environmental objectives of the Directive while giving industries a level playing field. However, the mandate needs to cover all three European Standardisation Committees (CEN, CENELEC and ETSI), not only one (as referenced in EP amendment 33).

Proposals:

- **Support also EP amendments 1, 11 and 33 of the Report of Rapporteur Florenz; the term “European Committee for Standardisation” in amendment 33 should however read “European Committees for Standardisation”**

6. RE-USE

Concerns:

- Notwithstanding the social benefits related to the re-use of products (before they become waste), Orgalime has concerns with the EP’s proposal to introduce separate reuse targets for several reasons:
 - Re-use (which must take place before a product becomes waste) does not always represent the most environmentally effective measure (especially not in comparison to energy efficiency aspects of products).
 - The term “re-use” itself is unclear, since it does not distinguish between a) products that are sold on by the consumer that owns the product to another consumer, and b) products that have been refurbished by other companies than the original producer and are then sold on to another consumer.

In the latter case, we believe that refurbished products should remain as safe, functional and environmentally performing as comparable to new products. In particular, minimum legal requirements should remain mandatory for such equipment to protect the consumer and the environment. Besides, the liability for any defects in

the refurbished equipment can, in our view, no longer remain with the initial producer, since he has had no influence on the refurbishment performed by another company.

- The difficulty to draw any lines between first user, second hand products business and reuse after ending up in collection network makes any target setting calculations inaccurate. The user in most cases sells the product for profit if there is any resell/reuse value.
- There is no methodology for calculating “reuse” or how to measure “prepared for reuse”.

Proposals:

- **Acknowledge that beneficial re-use of appliances can only take place before a product enters a collection facility**
- **Follow the Commission’s proposal for including reuse targets of whole appliances within the recycling targets instead of introducing separate reuse targets**
- **Support EP amendment 5 of the Report of Rapporteur Florenz**
- **Reject EP amendments 27, 39, 40, 41, 42, 43, 44, 46 and 56 of the Report of Rapporteur Florenz**

7. WASTE SHIPMENT

Concerns:

- Orgalime supports strengthened rules to dry out illegal shipments of WEEE that occur today primarily under the ticket of “reuse”. While we fully agree that such illegal waste shipment must be stopped, we feel that the proposal to allow legal shipments of WEEE only during the period of warranty falls far short of practical needs for legal shipments for the purpose of repairing professional goods after expiry of the warranty period.
- Legal exports also need to be possible after the warranty period to guarantee the repair of equipment and to avoid that an appliance has to turn into waste earlier than necessary.

Proposals:

- **Support EP amendments 37, 68, 71, 72, 73, 74 and 80 of the Report of Rapporteur Florenz**
- **Reject EP amendments 67, 75 and 86 of the Report of Rapporteur Florenz**

8. PRODUCT DESIGN

Concerns:

- Industry fully supports the promotion of eco design. This issue is, however, comprehensively addressed and regulated via the Eco Design Directive. The WEEE Directive based on article 192 should not intervene on product legislation regulated in the article 114 Eco Design Directive. It should also not prevail the findings of the preparatory evaluation process that has to be carried out before setting eco design requirements via implementing measures. This could arise from certain EP proposals that sideline the Eco Design preparatory study process and immediately request the establishment of requirements on resource efficiency or the facilitation of reuse, dismantling or recovery of WEEE without such studies.

Proposals:

- **Reject EP amendment 24 of the Report of Rapporteur Florenz**

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