

Brussels, 16 February 2009

MAIN COMMENTS ON COMMISSION RECAST PROPOSAL FOR DIRECTIVE 2002/96/EC (WEEE) COM (2008)810/4

Orgalime kindly requests the support of European regulators for the following key concerns on the Commission's proposal of 3.12.2008 for amending Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE):

1. **Lack of transparency:** Notwithstanding certain stakeholder consultations before summer 2008, the Commission did not discuss key options chosen for the final proposal with stakeholders beforehand. It also does not support its final proposal with sound data, an implementation report or its own preparatory studies that would justify the need for fundamental changes in the directive, i.e. in the areas of financing and collection. As a consequence, we feel that the proposals are completely inappropriate and we rely on the European Parliament and Council to achieve a workable solution.
2. **Producers of electrical and electronic equipment are committed to the objectives of the WEEE Directive:** Producers have taken their responsibility seriously and have driven an effective and efficient implementation of the existing directive in the member states, which we will continue to do. Producers are fully committed to treat 100% of the WEEE that is handed over to them in compliance with the respective provisions of the WEEE Directive.

Orgalime therefore acknowledges the Commission's identified **outstanding issues with regards to the management of WEEE**, and in particular:

- To avoid improper treatment of WEEE inside the EU and illegal WEEE shipments outside the EU
- To reduce administrative burden and costs without lowering environmental protection
- To better harmonise and clarify the directive, i.e. in the areas of registration, reporting and scope
- To bring all WEEE collected and treated into the official WEEE reporting scheme
- To ensure an efficient raw material and resource management

3. **However, industry disagrees that the proposed "solutions" as outlined in the Commission proposal could solve these identified problems with WEEE. In particular:**

- **The proposal to encourage producers to finance all costs occurring for WEEE collection facilities is neither practically nor legally appropriate as a way to combat improper treatment in the EU or illegal shipment of WEEE outside the EU (so called "leakage").** This is obvious for the following reasons:
 - It is the *consumer* who is free to choose to return WEEE or to keep it inside his household for any other purpose. Consumers are also free to choose the actor to whom they return any of their WEEE (be it municipality, retailer or other).
 - *It is retailers, distributors, municipalities, scrap dealers and traders* that also collect WEEE today, however, who are free to choose to whom to hand over/sell second hand appliances and WEEE, while bearing no reporting or other obligations for the WEEE collected by them.
 - To date, *authorities with all their enforcement power* have not succeeded making other actors than manufacturers return and report on WEEE they possess within the official WEEE channels or to control effectively European export harbours.

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs over 11 million people in the EU and in 2007 accounted for some €1,813 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.

- *Consumers already pay municipalities* for their usual household collection through local taxes, which are unlikely to go down.

Putting the WEEE Directive into practice is a complex process that cannot be steered by manufacturers alone, but that involves many different actors that each have an influence on the practical result of WEEE management - to name but a few:

manufacturers, importers, distributors, retailers, scrap dealers and traders, municipalities, other collectors, recyclers, WEEE take back schemes, enforcement authorities and of course consumers!

In addition, contrary to the Commission's proposal, there is no correlation between consumer behaviour in returning WEEE and financing of municipal collection sites. There is also no correlation between financing of waste collection and illegal waste exports.

Therefore, producers cannot accept a proposal that provides a blank cheque for invoicing of costs occurring for collection facilities without

- a. **the explicit right for producers to also physically organise collection, and**
 - b. **the obligation on all other actors to indeed return and report on WEEE inside the official WEEE channel.**
- **The proposal that producers should be responsible in the future for meeting a new collection rate of 65% based on sales volumes is completely unrealistic and also falls behind the environmental objectives of the WEEE Directive:**
 - Today, national authorities, who have the means to enforce the law, are far from reaching such a percentage for WEEE collection. In the absence of any rules for actors other than producers (especially retailers, collectors and scrap dealers) to report on their WEEE related activities or to ensure that the WEEE they possess enters into the official WEEE channels, we cannot see how producers would be in a position to collect more than authorities are able to bring into official streams today.
 - Furthermore, there are currently no safeguards for producers to prevent speculation on and misuse of prices for waste in a context where they bear the obligation to reach the proposed collection rate but have no control on associated costs.
 - Finally, a collection rate that is calculated on the basis of sales volumes of new products not only disregards EEE market realities, but also risks leading to undesired environmental results: It means that the less weight of new products a producer places on the market, the less amount of waste he would be required to collect. This would apply even if the previous appliances were heavier than the new ones (for example: shift from CRT heavy appliances to lighter LCD products).
 - We welcome the proposal for **better registration by harmonised data and reporting procedures**. Though, this proposal can only be effective if the scope of WEEE is fully harmonised in the EU. This, however, is not the case in the present proposal, which still proposes a sole legal base of article 175 of the EC Treaty. A shift of the WEEE annexes to RoHS Directive cannot resolve this situation. Orgalime advocates for a fully harmonised WEEE scope laid down in the WEEE directive without any cross reference to certain provisions in RoHS, while the scope of the RoHS Directive should be laid down in the RoHS Directive without any cross reference to certain provisions of the WEEE Directive.
 - **Legislation can only be effective if its provisions are clear cut and enforceable and if all provisions are properly enforced by member states.** Some provisions in the proposal apparently overlook the reality that enforcement is a member states' competence, which will weaken the effectiveness of the directive if finally adopted.

In conclusion, Orgalime regrets that the Commission has not seen fit to come forward with a proposal that recognises the enormous efforts made by the industry to set up an effective WEEE management scheme in record time and that mirrors the reality of WEEE management as being a multi-stakeholder process, which can only work to the benefit of the environment, the consumer and industry if it addresses both, the right targets and the right tools. Neither of these unfortunately is the case for the current recast proposal. Orgalime is looking forward to contribute to the further discussions and to provide alternative proposals to the above mentioned problem areas that can help improving environment protection while at the same time avoid an unnecessary fundamental change of official WEEE management structures existing and performing successfully today, which would only cause unnecessary additional administrative burden and multiplied costs for same services that in the end the European consumer has to bear.