

## POSITION PAPER

Brussels, 8 March 2019

### Eunomia study in support of developing Guidance for Extended Producer Responsibility (EPR) Schemes: Comments on modulation of producers' financial contributions

Orgalim representing Europe's Technology Industries, including manufacturers of Electrical and Electronic Equipment (EEE), would like to provide the following observations on the modulation of financial contributions paid by producers in view of the upcoming stakeholders workshop on 12 March 2019 organised by the Commission study contractor Eunomia. Orgalim's comments are to provide input to the Eunomia study to support the development of the Guidance for Extended Producer Responsibility Schemes and will focus on Waste Electrical and Electronic Equipment (WEEE).

#### 1. INTRODUCTION - LEGAL FRAMEWORK

The **Waste Framework Directive** (EU) 2018/851 (WFD) amending Directive 2008/98/EC on waste entered into force on 4<sup>th</sup> July 2018 and is due to be transposed by the Member states by 5<sup>th</sup> July 2020.

The Directive defines "**general minimum requirements for Extended Producer Responsibility (EPR) schemes**" (Article 8a WFD). Existing EPR schemes have to comply with the provisions of this new Article by 5<sup>th</sup> January 2023 (Article 8a.7 WFD).

Regarding the financial contributions paid by the producers, **Article 8a.4 WFD** states:

*Member States shall take the necessary measures to ensure that the **financial contributions paid by the producer** of the product to comply with its extended producer responsibility obligations: (...)*

*(a) cover the following **costs** for the products that the producer puts on the market in the Member State concerned:*

- costs of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the Union waste management targets, and costs necessary to meet other targets and objectives as referred to in point (b) of paragraph 1, taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees;*
- costs of providing adequate information to waste holders in accordance with paragraph 2;*
- costs of data gathering and reporting in accordance with point (c) of paragraph 1.*

***This point shall not apply to extended producer responsibility schemes established pursuant to Directives 2000/53/EC, 2006/66/EC or 2012/19/EU.***

*Orgalim represents Europe's technology industries: companies that innovate at the crossroads of digital and physical technology. Our industries develop and manufacture the products, systems and services that enable a prosperous and sustainable future. Ranging from large globally active corporations to regionally anchored small and medium-sized enterprises, the companies we represent directly employ 11 million people across Europe and generate an annual turnover of around €2,000 billion. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.*

*(b) in case of collective fulfilment of extended producer responsibility obligations, **are modulated**, where possible, for individual products or groups of similar products, **notably by taking into account their durability, reparability, re-usability and their recyclability and the presence of hazardous substances** hereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and when available, based on harmonised criteria in order to ensure a smooth functioning of the internal market.*

**Article 8.5 WFD** states:

***The Commission shall publish guidelines, in consultation with Member States (...) on the modulation of financial contributions** referred to in point (b) of Article 8a(4).*

*Where necessary to avoid distortion of the internal market, the Commission may adopt implementing acts in order to lay down criteria with a view to the uniform application of point (b) of Article 8a(4), but excluding any precise determination of the level of the contributions.*

**Recital 27 WFD** states:

*The Commission should adopt guidelines on the modulation of financial contributions of producers of products to extended producer responsibility schemes in order to assist Member States in the implementation of this Directive in facilitating the functioning of the internal market. To ensure coherence in the internal market, the Commission should be able to adopt **harmonised criteria** for that purpose by means of implementing acts.*

## 2. ORGALIM COMMENTS

### General comments

On the **general concept of “eco-modulation” of producers’ fees**, we acknowledge the good intention to reward producers for their efforts in ever more environmental conscious product design contributing to achieving the targets of the Circular Economy.

### Prerequisites/ conditions of success

#### **Purpose:**

The eco modulation should serve a clear purpose i.e. “provide incentives for producers” as stated in Recital 22 of the WFD (“*The general minimum requirements (...) should (...) provide incentives for producers, when designing their products, to take better into account durability, recyclability, reusability, reparability and the presence of hazardous substances*”). Producers are today responsible for the financing of the management of WEEE according to the waste stream specific Directive 2012/19/EU on WEEE and respective national implementing legislation.

#### **Harmonisation and coherence:**

Should modulated fees be considered for WEEE, not only the legal criteria mentioned in the WFD (e.g. durability, reparability, re-usability and recyclability and the presence of hazardous substances) require harmonisation at EU level but also the underlying technical criteria per waste stream, between product categories and even between products. In our view, defining the meaning of the legal criteria (e.g. “recyclability” for all waste streams or even for one particular stream e.g. WEEE) will not be sufficient nor be compliant with the WEEE-specific financing obligation that “each producer shall be responsible for financing the operations relating to the waste from his own products” (Article 12.3 WEEE).

- Should legal and technical criteria for modulated fees be developed for WEEE, these must be aligned with the already existing harmonised product requirements and obligations set by relevant Union law and related standards, in particular:

- The EU Ecodesign Directive's and Energy Labelling Regulation's implementing measures, EU legislation on chemicals (Restriction of Hazardous Substances (RoHS) Directive and the Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)). To note that the recently approved new ecodesign obligations define e.g. material efficiency requirements, including availability of spare parts or the provision of repair information while the WEEE Directive already foresees that producers provide information about preparation for re-use and treatment.
- The ongoing work of the CEN-CENELEC TC10 about material efficiency aspects for ecodesign.
- We stress the principle of non-retroactive application of law when envisaging legal and technical criteria for modulated fees.

### **No one size fits all solution:**

Due to the important differences between waste streams, between product categories (within the same waste stream) and even between products (within the same product category), there need to be different types of criteria for these different waste streams or product categories or even products. The applicable criteria have to fit with the concerned products.

### **Financing obligations of producers must remain as today:**

The modulation of fees should not impact the current way of financing the collection and take back of products. Regarding WEEE, the financing obligations are defined by Articles 12 and 13 of the WEEE Directive 2012/19/EU that require producers to provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private household that has been deposited at collection facilities. We remind that the Article 8a.4 WFD (costs covered by the financial contributions paid by producers) does not apply to EPR schemes established pursuant to waste stream specific legislation, such as the WEEE Directive. This means that the general minimum requirements for EPR schemes in the WFD cannot alter the scope of the financial responsibility defined in the WEEE Directive.

### **Enforcement:**

Obligations and criteria should be clear, transparent, measurable and enforceable. The criteria should also be easily traceable in the information systems of producers. A level playing field should be secured in order to avoid the misuse of the modulated fees by free-riders and in particular by online free-riders.

### **Involvement of producers:**

The determination of the criteria for the modulated fees must be defined in close partnership with the producers who are and remain responsible for their various EPR obligations (collection systems, financing, etc).

### **Points of attention and recommendations**

The potential impacts of eco modulation on producers financial/reporting obligations and on producer responsibility organisations (PRO's) finances are potentially very high and should not be underestimated. **Increased administrative burdens** for the sake of introducing modulated fees **should be avoided**.

We draw your attention to the following elements:

- The implementation of modulated fees on all WEEE products will be extremely challenging. Thus, we recommend the study to **focus only on a few products** as it is the case in France for example. Indeed, in France that has already implemented modulates fees, they apply only to a dozen products.
- The **levels of the current financial contributions** (in absolute and in relative terms) are **extremely diverse** (from extremely low to an important percentage of product price).

- The **cost for producers** is not only recycling, but also **collection and logistics**. These recycling costs (or even revenues) vary by product category and are also fluctuating over time.
- The **“real” end-of-life costs and the “recyclability”** of a specific product can only be determined years after the product has been brought onto the market, depending on real-life recycling technology at that specific point in time. However, the assessment of the modulated fees criteria will have to be carried out before the product is placed on the market and years before it becomes waste.
- Current costs are modulated fees on the financing of the WEEE **currently exiting the market**.
- PRO’s are facing **competition** from other, often illegal, organisations and also from individual companies.
- Since 15<sup>th</sup> August 2018, the **scope of the WEEE Directive** has been extended to all EEE unless explicitly excluded (“open scope”). For more details please see the Orgalim practical guide to understanding the scope and obligations of the WEEE Directive available [here](#). It means that a very large and extreme variety of EEE are subject to EPR obligations.
- Article 13.2 of the WEEE Directive (financing in respect of WEEE from users other than private households) foresees that **producers and users may “conclude agreements stipulating other financing methods”**. As a consequence, the financing of the non-household WEEE does not necessarily imply the payment of a financial contribution in that case.

In addition, we remind the **recommendations and conclusions** of the following reports:

- **EU [WEEE compliance exercise study from 2018](#):**

*The European Commission when preparing guidelines on modulation of fees should take into consideration information and experience from the Member States already implementing modulated fees. The Commission should also consider adopting implementing acts in order to lay down criteria for the modulation of fees at European level. To this end, it should identify conditions of success and points of attention from the Member States implementing modulated fees and notably looking at the products for which the modulation should be set as a priority and is feasible, bearing in mind that modulation should provide a sufficient incentive to influence design of the products to improve product reuse and recyclability and also looking how to ensure that criteria are clear and based on lifecycle approach, easily provable and feasible also in terms of their administration.*

- **Niras 2015 [report](#) about the Danish voluntary agreement on WEEE and differentiated payment:**

*Based on a case of light sources, notably CFL-i bulbs and LED bulbs, it was studied whether more true-cost environmental fees will theoretically give producers higher incentives to produce eco-designed products. The results of this case, however, revealed a limited potential, which is particularly due to the very low environmental fees compared with the sales price of the products. Furthermore, the costs related to reuse and recycling have decreased since the implementation of the WEEE Directive, so today there are no expectations of higher environmental fees in the future.*

Orgalim remains available to provide the relevant expert input to your activities and looks forward to the workshop on 12 March 2019.

*For further information, please contact:*

Sigrid Linher, Director Energy, Climate and Environment: [firstname.lastname@orgalim.eu](mailto:firstname.lastname@orgalim.eu)

Stéphanie Mittelham, Manager Environment: [firstname.lastname@orgalim.eu](mailto:firstname.lastname@orgalim.eu)