



SHAPING THE EU'S FUTURE WASTE POLICY

ORGALIME POSITION PAPER

on the Commission's Thematic Strategy Prevention and Recycling of Waste and Proposal for a Directive on Waste (COM (2005) 667 final)

Brussels, 24 July 2006

Executive Summary

In the context of ongoing discussions on the Thematic Strategy of Prevention of Waste and Recycling and the proposal for a Revised Waste directive, Orgalime requests the support of regulators for the following key comments of our industry, which arise from the fact that our companies are subject to both waste stream specific legislation and to a considerable body of other environmental policies and legislation:

Orgalime believes that the following principles should govern the revision of EU waste policy:

- Harmonisation - safeguard the functioning of the internal market, a key achievement of the EU
- Simplification
- Consistency in EU policy and legislation applying to the engineering industries
- Cost effectiveness
- Stakeholder consultation
- Impact Assessment
- Sustainability

Orgalime welcomes

- the importance attached to the full implementation of existing waste legislation and
- the proposed flexibility in the waste hierarchy by incorporating a life cycle approach into EU waste policy.

Orgalime calls upon regulators

- to take the opportunity to iron out problem areas in existing waste legislation, especially if provisions disrupt the internal market. In the light of Better Regulation and simplification, article 95 of the EC Treaty must be the legal base where EU waste legislation involves product related aspects and therefore constitutes product policy (see particular remarks on waste prevention measures that constitute product measures or comments on the proposal to reclassify certain wastes as secondary products/materials/substances).
- to ensure **consistency throughout the legislation** affecting our industries (such as WEEE, RoHS, EuP, IPPC, Batteries directives). Among the examples we can cite are the following:
 - the EuP directive also includes the waste phase when setting future eco design requirements,
 - definitions of "waste", "recycling" or "recovery" are not only provided in the proposed waste directive but also in the above mentioned EuP and WEEE directives or waste shipment regulation,
 - potential future common EU-wide recycling standards should not overlap with the treatment provisions directly included in annexes II/III of the WEEE directive,
 - the proposed permitting procedure should not duplicate the IPPC process.
- to **involve stakeholders, including industry, by establishing a Consultation Forum**, especially for discussing the reclassification of certain wastes as secondary substances/materials/products or if establishing efficiency criteria for recovery operations.
- to **provide clear-cut environmental objectives** for treatment, recycling, incineration and landfill in order to open the option to move away from targets, be they waste-stream oriented or material specific.
- to provide a **coherent waste policy framework**. We do not believe that a new material specific approach coupled with a waste stream specific approach would provide such coherence.

Introduction

ORGALIME speaks for 35 trade federations representing some 130,000 companies, the vast majority of which are SMEs, in the mechanical, electrical, electronic and metalworking industries of 24 European countries. These industries employ some 10 million people and accounted in 2005 for 1598 billion Euro of annual output, which is over a quarter of the EU's output of manufactured products and a third of the manufactured exports of the European Union.

The present position paper is structured into three parts:

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I. BACKGROUND TO ORGALIME COMMENTS: EXPERIENCE WITH THE TRANSPOSITION OF ELECTRICAL AND ELECTRONIC WASTE DIRECTIVE (WEEE)

Waste legislation, including the WEEE directive, has in the past been based upon the sole legal base of article 175 of the EC Treaty. Given the experiences related to the transposition of the WEEE directive, however, it becomes evident, that basing waste legislation upon article 175 EC Treaty solely risks fragmenting of the internal market, in particular where such legislation includes product related aspects.

For the WEEE directive, member states' transpositions diverge in key areas related to the functioning of the internal market and the free circulation of goods in the internal market, such as:

- Scope
- WEEE marking requirements
- The definition of "the producer" and the notion "put on the market"
- WEEE national registers
- WEEE financial guarantees

Such divergences not only create trade barriers in the internal market¹, but also create significant additional administrative burden for companies in industry the majority of them are SMEs. This can only result in a negative impact on our industry's competitiveness.

Orgalime therefore welcomes that the Commission intends to "modernise" the existing waste legislation and particularly calls upon regulators to take the opportunity to iron out problem areas in existing waste legislation, especially if provisions disrupt the internal market. We believe that, in the light of Better Regulation and simplification, article 95 of the EC Treaty should be considered where EU waste legislation involves product related aspects and therefore constitutes product policy.

In our view, the WEEE directive would clearly benefit from simplification: Especially in such areas where the **internal market** is affected, legislation must be fully harmonised.

So as to avoid unfair competition, we believe that a number of **short-term solutions** on the WEEE directive should be adopted, particularly regarding the following topics:

- **Scope:** work towards a common scope in all EU countries and regions - Orgalime has published a WEEE/RoHS scope Guide which may be helpful in this context.

¹ For example: Member States are in the process of establishing their WEEE national registers. The data and information that are to be submitted by companies to these (at least) 25 different registers differ vastly. Some member states even require the presence of a legal representative of the company in the territory of their member state to be allowed to register and put a product on the market. See Orgalime position paper at <http://www.orgalime.org/issues/weee.asp>

- **Coordination of national registers:** producers have to register in every member state; we invite the Commission to encourage member states to agree upon common procedures and formats. Orgalime has recently made proposals on this issue. In nearly every country in the meantime national guidance documents with different interpretations have been published.
- **Key compliance terms and definitions used in different pieces of EU legislation,** such as “Put on the Market” or “the producer”, “quota reporting”, definitions of “equipment, appliance, instrument, product and parts” should be identical for (technical or environmental) legislation applying for Orgalime industries. **Full harmonisation of the definitions is a must.**²

Apart from the WEEE directive, a considerable body of environmental policy and legislation applies to our industry and its products: RoHS, REACH, EuP (which also covers the waste phase), IPPC, Waste shipment, Batteries, End of Life Vehicles, to name but a few. Such multiple legislation often overlaps and duplicates requirements on the same issues, giving rise at the same time to an unnecessary burden of administration and bureaucracy for individual companies.

Orgalime therefore advocates for **consistency of EU policy and legislation** that affects our industry and invites regulators to ensure such consistency when discussing the EU’s future waste policy framework and to **explore the full simplification potential of waste legislation**, as a first step in the context of the draft revised waste directive and next, at the occasion of the upcoming revision of WEEE/RoHS directives in 2008.

II. COMMENTS ON THEMATIC STRATEGY WASTE PREVENTION AND RECYCLING

- **Full implementation of existing waste legislation**

Considering the experience related to the transposition and implementation of the WEEE directive, Orgalime strongly supports this objective. With member states driving individual interpretations of certain provisions included in EU waste legislation, and product related provisions of the WEEE directive in particular, companies find themselves facing a scenario of having to apply 25 different sets of rules for the same products. Such divergences often occur not only at member states’, but even regional levels.

Orgalime strongly encourages the Commission to take a determined leadership role for driving as common as possible an understanding of member states when transposing EU legislation, including waste legislation where products are affected. Developing timely and accurate guidelines at EU level can help to foster a more harmonised approach in transposition of waste legislation, while helping ensuring a level playing field for our industry and not unduly undermining its competitiveness.

- **Life cycle approach**

To date, the EU’s waste policy has been firmly based on the hierarchical system where certain waste handling activities take precedence over others.

Orgalime views as positive that the Thematic Waste Strategy would allow for a more flexible approach to the present waste hierarchy by supplementing it with a broader life cycle thinking (LCT) approach.

Orgalime, however, calls upon regulators to avoid some of the shortcomings potentially linked with current legislation:

- It is preferable to also carry out a sustainability analysis, which includes environmental, economic and social aspects, with full consultation of the concerned industry prior to deciding on the handling of the different waste fractions.
- For our industry, Life Cycle Thinking and its particular application to our sector, has been enshrined in the recently adopted Eco Design of Energy Using Products directive (EuP), which provides a framework for the integration of environmental

² See, for example, Orgalime’s position paper on definitions of « placing a product on the Community market » at http://www.orgalime.org/positions/latest_positions.asp

aspects, including such aspects occurring at the waste phase, into the design of energy using products. **Orgalime rejects any duplication of legislation potentially resulting from the introduction of a life cycle approach into waste policy.** This comment is also in particular valid for the upcoming revision of the WEEE directive, which the Commission, in the context of Simplification, has scheduled for 2008.

- Life Cycle Thinking is the fundamental discipline underpinning environmentally conscious design practices. On the other hand it must be stressed that LCA (Life Cycle Analysis) is *not* an appropriate tool in the design process. An LCA is an "end of pipe" tool, which – if conducted diligently – is extremely complex, burdensome and impracticable for SMEs, which constitute the vast majority of our industry. If it is to be run on manufactured products, only experts can do this, and it is impossible to realise LCA on products under development.

- **Recycling targets and proposal to shift away from waste stream specific targets**

For our industry, this discussion comes at a moment where waste stream specific legislation has just been put into place (WEEE). Orgalime believes that the outcome of the discussion on the Thematic Waste Strategy on this issue and its potential implementation in our industry would require consultation and discussion with our sector. In principle, Orgalime considers consistency and coherence in EU legislation a priority. It is of utmost relevance to avoid different systems running in parallel leading inevitably to the duplicated costs that such parallel systems would cause. When deciding on how to handle certain waste fractions, the economic impact of such decisions should be assessed properly in advance.

Orgalime understands and supports the overall environmental aims of a future waste management, i.e. reducing the environmental impacts and optimising resources efficiency, at the lowest cost. At the same time Orgalime sees a necessity to allow for flexibility regarding waste management activities in the market. An overall efficient waste management has to optimally align case-by-case qualities and amounts of distinct waste streams, available technologies for treatment and recycling and recovery and not least markets for products derived from such activities. This call for flexibility is further justified because different underlying conditions (technological, economic, regulatory) are found in different EU member states.

In order to keep track of the overall environmental objectives of EU waste policy, a conceptual approach as already put for discussion in the course of the ELV stakeholder consultations in 2005 might be worthy of further exploration.

The Thematic Strategy states that it should be the long-term goal for the EU "to become a recycling society that seeks to avoid waste and uses waste as a resource". This should in our view not be seen as an absolute goal since there are limits to recycling, technically, economically and environmentally speaking. From a life cycle perspective, recycling may not always be the preferred option. In many cases recovery is more efficient.

Besides, the Thematic Strategy stresses that the recent revision of the recycling and recovery targets contained in the Packaging and Packaging Waste Directive "has shown the importance of setting targets at the appropriate levels in proportion to the scope of the definition and of taking into account the specifics of each material". "Without such an analysis", the Strategy continues, "there is a risk of setting targets that promote processes with little or no environmental benefit or which fail to promote technologies that could deliver sizeable environmental benefits, but find it difficult to break into the market" (see page 18).

Orgalime underlines this fact that the impact assessment has shown that rigid target setting in new waste stream based directives is not always effective. Also, the targets set in the WEEE directive are extremely ambitious. In view of these targets being subject to the revision in 2008, Orgalime requests any review in this area to be based on solid analysis of

the experiences with WEEE implementation as well as proper impact assessment and stakeholder consultation.

Orgalime takes the view that if policy makers provided clear-cut environmental objectives for waste treatment, recycling, incineration and landfill, the necessity of setting targets, be they waste stream oriented or material specific, could in general be revisited.

- **Proposal to promote “pay as you throw” schemes**
“Pay as you throw” schemes, while interesting and probably economically more efficient, have also not been the legislator’s choice, for example when adopting the WEEE directive. On the contrary, WEEE establishes the obligation of advance payment by producers by requiring the producer to provide a financial guarantee prior to placing equipment on the market, to provide for financing the waste treatment at the end of life of the equipment. If the outcome of the Thematic Waste Strategy Consultation were to promote “pay as you throw” schemes, consistency with existing waste stream specific legislation, such as WEEE will have to be discussed with the industry concerned.
- **Proposal to establish EU wide common reference standards for recycling**
In areas where no common rules for recycling exist today, such standards indeed would offer the possibility of helping fostering a level playing field among recycling industries. For waste electrical and electronic equipment, however, the WEEE directive in its Annexes II/III sets common treatment requirements for WEEE. Duplication of legislation must in any case be avoided. Cost-efficiency must also be the guiding principle and such new recycling standards, which might be adopted, should not result in higher prices for consumers.

III. ORGALIME SPECIFIC COMMENTS ON DRAFT REVISED WASTE DIRECTIVE

- **Harmonisation - Legal base**
In general, Orgalime is concerned with the decentralisation that in our view is likely to occur from the proposed revised waste directive. The present proposal, as well as the WEEE directive, clearly involves product related elements, such the proposal for a re-classification of waste as secondary products/materials/substances. Certain definitions also, if they were to promote a level playing field, would in our view definitely require full harmonisation cross member states.

Orgalime regrets that the potential of full harmonisation has not been explored for these areas in the draft revised waste directive. On the contrary, a series of further proposals in our view constitute a serious threat to the functioning of the internal market by granting member states too high a degree of flexibility to divert from EU provisions. These particularly concern the proposed possibility for member states to depart from the hazardous waste list (articles 14/15), the wide flexibility granted to member states in the context of developing waste prevention programmes (article 29ff) and the inclusion of design related aspects under annex IV. We believe this should be reconsidered.

We therefore take the view that if the draft Waste Directive is indeed to serve as an example of Better Regulation and simplification, article 95 of the EC Treaty must be considered as the sole legal base for all product related aspects involved.

- **Stakeholder consultation**
With reference to Better Regulation principles and in the interest of better transparency in comitology, Orgalime believes that in the conduct of any of its activities under the proposed comitology, the Commission should always consult stakeholders and industry in particular.

Article 36 should in our view be amended as follows:

“4. The Commission shall ensure that in the conduct of its activities it observes, in respect of each implementing measure, a balanced participation of all interested parties concerned, and industry in particular.”

- **Definitions (Article 3)**

Regarding the **definition of “waste”** provided in article 3.a, Orgalime believes that the term “discard” requires further clarification in order for the given waste definition to better work in practice. We would therefore welcome the inclusion of a specification in relation to the term “discard” within article 3.

Regarding the **modified definition of “re-use”** and the **newly introduced definition of “recycling”**, we wish to stress that the WEEE Directive also includes such definitions. Besides, the recently adopted Eco Design of Energy Using Products Directive (EuP) equally includes definitions of “re-use”, “recycling”, but also “energy recovery”. For the sake of ensuring simplification and coherence, we therefore call upon legislators to **ensure consistency of these definitions throughout legislation affecting our industry.**

- **End of Waste: Secondary products, materials and substances (Chapter III: Article 11)**

While the draft directive leaves the existing definition of waste unchanged, it introduces a mechanism to allow the possibility of clarifying when certain wastes cease to be waste. In general, Orgalime welcomes the Commission’s proposal for introducing such a mechanism.

However, we clearly see shortcomings in the proposed mechanism and believe that article 11 needs to be adapted to take into account the following:

- Stakeholder consultation forms a key commitment in the context of Better Regulation. The present text, however, does not foresee the consultation of concerned parties. We suggest involving stakeholders by establishing a Consultation Forum by adding a new paragraph to article 11:

“(New) The Commission shall ensure that in the conduct of its activities it observes, in respect of each implementing measure, a balanced participation of all interested parties concerned, and industry in particular.”

- The wording of article 11.1.a is misleading and article 11.b in our view presents too static a view. New markets/uses can develop very quickly. Article 11 should therefore be modified as follows:

“Article 11 (1)b

The Commission shall deem certain waste to have ceased being waste, to have completed a waste recovery operation, and to reclassify that waste as secondary products, materials or substances, if the following conditions are met:

- a) Re-classification would not significantly increase the overall negative environmental impact from a life cycle perspective,*
- b) A market exists, or a new use that is technically and economically viable is recognised, for such a secondary product, material or substance.”*

- The decision on the (non)- existence of a market for the secondary product/material/substance in our view constitutes an economic decision, which should be left exclusively up to individually concerned companies. Article 11.2 should therefore exclusively refer to environmental criteria. The reference to “quality criteria” should be deleted.

- In order to secure a harmonised implementation in the internal market, a precise transposition deadline for member states should be established by adding a new paragraph to article 11:

“ (new) Member States shall adapt their national laws and measures with decisions taken under article 11.2 no later than twelve months after their adoption.”

Finally, it is evident that any reclassification of waste as a secondary product/material or substance following this new article 11 would not impact the calculation of any collection, recycling or recovery targets established under existing waste stream specific legislation, such as WEEE, since the collection/recycling/recovery loop would have been closed prior to such reclassification taking place.

- **Distinction Recovery –Disposal (Articles 5 & 6, annexes I & II)**

Orgalime agrees on the need to better clarify the distinction between recovery and disposal activities at European level. We therefore acknowledge the Commission’s attempt to provide further clarification in this area by foreseeing a mechanism of specifying what processes should be considered “recovery operations” under article 5 in conjunction with annex II, as well as what processes should be considered “disposal operations” under article 6, in conjunction with annex I.

More particularly, Orgalime supports the idea of promoting energy recovery by considering a re-classification of certain incinerators.

The establishment of new energy efficiency benchmarks to determine whether an incinerator can be identified as a recovery facility instead of a disposal facility, as proposed in annex II, may be a positive step in the right direction. However, we reiterate our irritation on the potential overlap of legislation by proposing both such benchmarks under the draft revised waste directive, as well as benchmarks for municipal incinerators through the revision of the IPPC directive. Besides, an energy efficiency BREF is just underway under the present IPPC directive and energy efficiency is a core issue in the context of the discussing potential implementing measures on energy using products under the Eco Design directive (EuP). Developing overlaps and, as a result, often incoherent legislation will only undermine both the policy objectives of regulators and competitiveness of our companies.

The Commission proposes that it should be mandated to adopt such efficiency criteria via comitology. Orgalime believes that following Better Regulation principles, stakeholders should be consulted (see proposed amendment to article 36).

Alternatively, a new paragraph, which would read as follows, should be added to both, article 5 and 6:

“The Commission shall ensure that in the conduct of its activities it observes, in respect of each implementing measure, a balanced participation of all interested parties concerned, and industry in particular.”

To explore the benefit of a harmonised understanding on what should be considered a recovery or disposal activity in the EU, the expression “at least” in article 5.1. and article 6.2 should be deleted.

- **Proposal that Member States will have to develop waste prevention programmes (article 29ff, annex IV)**

Waste prevention measures constitute measures that affect products and any waste prevention policy at the same time constitutes product policy.

For Orgalime industries, any potential future product related measure, including the waste phase or use of resources, must fully respect the framework recently adopted under the

Eco Design of Energy Using Products Directive, which to our mind is an example of Better Regulation in the area of environment and product policy.

Article 30 in our view undermines this Eco Design Directive (EuP), whose implementation is underway, and its core principle of harmonisation of product design related measures in particular. Including provisions regarding the design phase and leaving them to the flexibility of member states to act under article 175 of the EC Treaty causes the risk of disruptions in the internal market. Any design related legislation must be solely based upon article 95 of the EC Treaty, as accepted by legislators for the EuP directive.

It is difficult for us to understand that the Commission should be considering revising a policy approach, which it regularly cites as an example of Better Regulation. Orgalime therefore suggests at least deleting item 4 from annex IV or exempting our industries from its scope.

- **Permits (Chapter V: articles 19ff)**

Orgalime welcomes that no further permits will be required in the case of an establishment or undertaking having obtained a permit under the IPPC directive.

However, the present proposal seems ambiguous to us and even to undermine the IPPC directive. In particular, article 19 again fosters de-harmonisation by giving member states additional competences in the area of permitting, albeit risking divergent applications and permitting decisions in different member states.

Besides, article 21 seems to establish a parallel procedure for permitting to the IPPC directive and, thereby, duplicate legislation.

Again, the draft revised waste directive does not foresee any stakeholder consultation while this is the commonly established and recognised procedure for developing BREF documents under IPPC.

These shortcomings should in our view be removed from the proposal.

In conclusion then, Orgalime invites the European institutions to fully explore the simplification potential of waste legislation, as a first step in the context of the draft revised waste directive and next, at the occasion of the upcoming revision of WEEE/RoHS directives in 2008.

As an industry, which is subject to extensive environmental legislation, we welcome certain aspects of the tabled waste initiatives, such as the introduction of life cycle thinking into waste policy or the importance attached to the full implementation of existing waste legislation.

We are concerned, however, that new proposals of the Commission should translate into a policy, which is both, coherent and consistent, for stakeholders like our industry.

Furthermore, we are concerned that such a policy should lead to Better Regulation which, while reconciling both, environmental and competitiveness policies, should ensure a properly functioning waste policy in the internal market and a real simplification and harmonisation of the framework conditions under which stakeholders both, public and private, operate in this context.