

Brussels, 30 August 2013

Recast Waste Electrical and Electronic Equipment Directive (“WEEE2”): Comments on Draft Guidance Document (“FAQs“)

Orgalime thanks the Commission for both, the possibility to comment on the Draft Frequently Asked Questions Document on Directive 2012/19/EU, and for tabling a draft, which we generally consider a largely pragmatic, well-structured and comprehensive basis for effectively clarifying certain aspects of the Directive and helping producers in their preparations for compliance.

Orgalime expresses its explicit support for the following sections of the draft FAQs:

- The draft Q&As provided regarding the appointment and possible mandate of an **authorised representative** (Q 1.32 and 1.33)
- The draft Q&As provided regarding **separate collection/collection rate**: we explicitly welcome the approach of including all routes and flows of WEEE for the future implementation of the Directive (Qs 1.19, 1.25 to 1.29). This will strengthen the environmental objectives of the Directive and the Commission’s wider resource efficiency policy. While we suggest removing the last paragraph of Q 1.23, we also welcome that Member States have been confirmed as the responsible addressees of the target in this entry.
- The draft Q&As provided to secure a **European approach to the marking obligations** to provide information to treatment facilities (Q. 1.31).
- The draft Q&As regarding **annex VI on minimum requirements for shipments**, including the suggested interpretation of certain derogations and documentation requirements in case of legal shipments (Qs 1.38, 1.39, 1.45).
- Most parts of the draft Q&As regarding the understanding of **the scope during the transition period**, including the definition of “*dependent*”, the continuation of the existing ten scope categories during transition period, the notion “*specifically designed*” and exclusions of equipment that uses electrical energy only for support or control functions (Q 1.4, 1.12, 1.13, content of Q 1.3, appendix/part 2/criterion 2).
- The draft Q&As provided regarding **reuse** (Q1.22).

Notwithstanding our overall support for the draft FAQs, we have also identified a number of areas, which we feel would benefit from further clarifications. Consequently, we would like to suggest the following improvements:

Orgalime, the European Engineering Industries Association, speaks for 38 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2012 accounted for some €1,840 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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Foreword:

For the sake of legal certainty, no departure from the current understanding of Directive 2002/96/EC (WEEE1) and related 2006 FAQs should be allowed during the transition period. Indent 1 should be reworded in this respect. Technically speaking, where sections of WEEE1 are supposed to be also applicable for WEEE2, these should be directly copied in the WEEE2 FAQs so that only one consolidated guidance document would apply in the future for WEEE2. This would facilitate the use of the new FAQs and improve their reader friendliness.

We also ask for the deletion of any reference to the RoHS FAQs from the WEEE2 FAQs, since during the recast, the legislator has explicitly decided to have WEEE and RoHS as two separate directives with two separate scopes, timelines and legislative basis. Any cross reference therefore lacks a legal base and should be avoided.

Q 1.3: While we support the content of this entry, technically speaking the sections of the 2006 FAQ that should remain valid for WEEE2 should be copied directly into the new FAQs. As mentioned above, there should be “only” one consolidated WEEE2 FAQ document.

Q 1.5: We suggest replacing the term “*non-removable*” by “*not intended to be removed by the end user*” and to add the clarification that all lamp technologies shall fall in the same (sub) category (see also Q 2.5).

Q 1.6: In contrast to the draft FAQs, we are of the opinion that there is a difference between the term “*equipment*” and the term “*product*” stemming from the fact that the IEC International Electrotechnical Vocabulary 60050 defines “*equipment*” as follows: “*a single apparatus or set of devices or apparatuses, or the set of main devices of an installation, or all devices necessary to perform a specific task. Examples of equipment are a power transformer, the equipment of a substation, measuring equipment*”. The IEC International Electrotechnical Vocabulary 60050 further on defines “*apparatus*” as follows: “*device or assembly of devices which can be used as an independent unit for specific functions. NOTE – In English, the term “apparatus” sometimes implies use by skilled persons for professional purposes.*”

Suggesting a synonymous use of those two terms for the purpose of WEEE2 risks confusion. We suggest deleting the entry.

Q 1.7: We welcome that it is explicitly stated that components are not covered by WEEE2. However, the suggested answer risks leading to confusion due to the term “*internal*”. Components can also be external. We suggest deleting the term “*internal*” so as to reconsider if the suggested “*intended function*” concept should indeed be used, as it seems confusing, too. The given example should read as follows: “*However, a self-assembly kit that consists of ...*”.

Q 1.8: Consumables are not in the scope of WEEE2 as they continue not to meet the definition of “*EEE*”. Neither the definition of “*EEE*”, nor the definition of “*dependent*” has been changed during the recast. Also, during the recast procedure, amendments to distinguish between electrical and non-electrical/electronic consumables and electrical/electronic ones have been explicitly rejected by the regulator and should not be reintroduced via an FAQ.

Q1.10: While we support the general content of this entry on “*inverters*”, it has to be noted that inverters can be finished products (in scope) or a large scale fixed installation (out of scope) as well. Therefore, the answer to Q1.10 should be amended as follows: “...*falls within the scope of the new WEEE Directive as long as the inverter is not specifically designed and installed according to Article 2.3 (b), or is a LSFI*”.

Q1.12: While we support the general content of this entry on “*specifically designed*”, the example given in the last paragraph appears confusing and in conflict with articles 2.4.d and 2.3.b of the Directive. The last sentence should be removed.

Q 1.15: We regret that the draft FAQs is not clearer on the issue of dual use. We feel that adding criteria could be helpful.

Q 1.18: We suggest including the aspect of re-sales of secondary, remanufactured/refurbished equipment in this entry. The terms “*on a professional basis*” and “*for many years*” should be deleted.

Q.1.23: We welcome the clarification that Member States are the addressees of the collection rate. The last paragraph of this entry (i.e.: “*However, organizing the actual collection of WEEE and achieving a collection rate ... individual or collective systems themselves.*”) undermines the all WEEE flows approach promoted in the draft FAQs (i.e.: in the chapters on “*separate collection*” and “*collection rate*”) and should therefore be deleted.

Q 1.27: The suggestion that Member States “*may opt to use substantiated estimates of WEEE collected through all routes to demonstrate the achievement of the collection rate*” must not result in undermining the reporting obligation of all actors, which needs to remain the priority route. We do support the understanding that “*substantiated estimates must be supported by independent scientific methodologies and be based as far as possible on real market data*”.

Q. 1.30: If the date for “historical waste” remains 13 August 2005, there will be large amounts of “new orphans”, e. g.: PV-panels, where manufacturers active after 2005 are not any more on the market today. We feel that this aspect should be included in the upcoming review study of the scope of WEEE2 following article 2.5 of the Directive.

Q 1.34: Orgalime suggests the following addition to the suggested answer: “The “Revised Correspondents’ Guidelines No 1” (Shipments of Waste Electrical and Electronic Equipment (WEEE)) represent the common understanding of all Member States on how Regulation (EC) No 1013/2006 on shipments of waste (Waste Shipment Regulation) should be interpreted. The guidelines were agreed by the correspondents at a meeting on 14/15 June 2007 organised pursuant to Article 57 of Regulation (EC) No 1013/2006 and state:

“Insufficient packaging for protecting items from damage during transportation, loading and unloading operations is an indication that an item may be waste. In general, the observation of poor packaging should lead enforcement agencies/authorities to make further enquiries regarding an item being transported.”

Used EEE that is properly packaged is therefore unlikely to be suspected to be WEEE.”

Q 1.35: We consider it more appropriate to oblige producers to carry storage costs in case of a proven infringement of the rules on shipments of used EEE, rather than under any circumstance. Enforcement of laws is a responsibility of authorities.

Q 1.40: The word “*contact*” should be replaced by “*contract*”.

Q 2.1: The expression “*unless explicitly excluded*” should already be included in the first paragraphs of this entry.

Q 2.4: To avoid misunderstandings, the “*m²*” in the last sentence of the answer should be corrected into “*cm²*”.

Q 2.5: We suggest replacing the term “*non-removable*” by “*not intended to be removed by the end user*” and to add the clarification that all lamp technologies shall fall in the same (sub) category (see also Q 1.5).

Scope: Q 2.6: The legislator clearly decided to have WEEE and RoHS as two totally separate directives with two separate scopes, timelines and legislative basis. Therefore, no reference should be made to the RoHS 2 FAQ document for the interpretation of the scope exclusions for LSFI/LSSIT. In particular, no reference should be made to the, in our view arbitrary criteria of size/dimensions given in the RoHS2 FAQs.

Such “ex-post” criteria (i.e.: criteria that relate to after the placing on the market of equipment going into LSFI/LSSIT), notably the criterion of physical size of the installation in terms of a precise quantitative figure of size, weight or volume of an installed or dismantled installation, cannot be determined and enforced.

The suggested dimension for LSSIT, additionally suggested in the draft WEEE2 FAQs, appear also arbitrary to us and would result in including a vast range of products, although such equipment does not end up in the municipal waste stream and is well taken care of at its end of life.

The complexity of installations and the impossibility to determine the “producer” will increase legal uncertainty and will end up generating orphan waste.

Instead, the scope exclusions of LSFI and LSSIT need to be understood in the context of their entire wording (not by singling out the term “large”), and more emphasis should in our view be given to the criteria of “complexity of installation” and “co-dependency of the different apparatus” for their understanding.

Q 2.12: The entry is confusing in the following respects:

Firstly, the definition of LSFI (Article 3(c) WEEE2) does use the term “*professionals*” (and not the term “*industrial*” or the term “*professional*”): in this case, the term “industrials” cannot be used as a synonym of “professionals” because it refers to the personnel (not the application itself).

Secondly, the definition of LSSIT (Article 3(b) WEEE2) does use the term “*industrial*”: in this case, the term “*professional*” can be used as a synonym of “*industrial*” because the exclusion for “Large-scale stationary industrial tools” also applies to “large-scale stationary professional tools.” Furthermore, the definition of LSSIT does use the term “*professionals*” (and not the term “*professional*”), but in this case, as for LSFI, this is in the context of the personnel, not the application, and cannot be substituted by “*industrials*”.

Scope: Appendix, part 1, p.31: The introductory paragraph should re-state that this decision tree is to be valid as of 15 August 2018, but not before that date. We also suggest an adjustment of the criteria mentioned in box 1 to entirely reflect the elements of the definition of “EEE”:

Is the equipment in the scope of the WEEE recast Directive?

1. *Designed for a use with a voltage rating not exceeding 1000V for alternating current and 1500V for direct current, AND*
2. a) *Dependent on electric currents or electromagnetic fields in order to work properly, OR*
 b) *Equipment for the generation of such currents or fields, or
 Equipment for the transfer of such currents or fields, or
 Equipment for the measurement of such currents or fields*

Scope: Appendix, part 2, p. 32f:

- The interpretation of the elements of the definition of “EEE” (criteria 1-5) should stay the same as in the 2006 FAQs/WEEE1, since this definition has not been changed during recast.
- Also in criterion 1, we suggest to replace the term “*large industrial equipment*” by “*equipment*” for the very same reason.
- Criterion 3 on “*equipment for the generation of electric currents or electromagnetic fields*” appears misleading in two respects: Firstly, there needs to be a reference that the criterion of “voltage range” is relevant for assessing if a generator falls in the scope of WEEE2. Secondly, a reference to the scope exclusion of “LSFI/LSSIT” from which generators can benefit in application of article 2.3.b, should also be added.
- For criterion 4, the clause should be completed as follows to avoid misinterpretation: “*Their core function is transferring electric current or electromagnetic fields for the equipment. All cables inside and/or as extensions or connections which are part of the equipment at the time of discarding are covered by the directive.*”
- Regarding criterion 5, the explanation should read as follows: “*To ensure inclusion of measuring equipment of electric currents or electromagnetic fields even if it is not in itself power consuming, for example a voltmeter*” to mirror the legal text of WEEE2.
- For criterion F (“LSFI”), please see comments on Q 2.6 (no reference to RoHS2 FAQ should be made, especially no arbitrary size/dimensions and “ex post” criteria should be introduced). We suggest adding the following further examples of excluded equipment: “*parts of the European Rail Traffic Management System (ERTMS), systems serving transport or energy infrastructure with large geographical coverage*”, and “*equipment used in industrial, commercial and residential locations (such as industrial sites, hospitals, airports, ports, office or public buildings) for energy distribution, climatisation centres, central fire and alarm protection systems, elevator and transportation systems, access control modules and systems.*” Such kind of equipment does not end up in the municipal waste stream but is taken care of in separate waste streams by professionals. Recital 9 of the recast WEEE Directive also explicitly lists elevators amongst the examples of LSFI.

- Criterion G: We suggest replacing the notion “*to differentiate between means of transport such as cars and smaller means of transportation, such as electric bikes and rollers*” by “*to differentiate between means of transport that are type approved and such that are not type approved*” since the definition of “*means of transport for persons or goods, excluding electric two-wheel vehicles which are not type approved*” does not relate to the criterion of size but type approval. Consequently, also the last paragraph of this entry should be modified into “*to exclude electric bikes and electric rollers that are not type approved.*”

Finally, Orgalime suggests adding **two new entries to the draft FAQs:**

- **A new Q&A regarding article 14.1 of the WEEE recast Directive**

Suggested new question: “Article 14.1 states that Member States may require producers to show, purchasers at the time of sale of new products, the costs of collection, treatment and disposal. If a Member State decides not to require producers to do this, can a producer still decide to show such costs?”

Suggested new answer: Individual producers are free to choose whether to show the costs of the WEEE management at the time of sale of new products even if Member State does not require that.”

- **A new Q&A concerning the introduction of a de-minimis clause**

Suggested new question: “Does the recast Directive foresee the possibility of introducing a “de minimis clause” of, for example, a certain tonnage of equipment, be out of scope and/or exempt from certain requirements of the Directive, such as financing?”

Suggested new answer: No, the recast Directive does not provide a legal base for a de minimis clause. A related proposal has been rejected during the recast procedure.

Exclusions from the scope are explicitly regulated in article 2 of the Directive. Furthermore, article 12 states that “...*each producer shall be responsible for financing the operations referred to in paragraph 1 relating to the waste from his own products.*”

For further information, please contact:

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