

Brussels, 12 December 2016

**COMMENTS ON EUROPEAN PARLIAMENT ACTIVITIES
ON CIRCULAR ECONOMY WASTE LEGISLATIVE PACKAGE:
“AMBITION IS GOOD –
DISRUPTING THE EU INTERNAL MARKET HOWEVER NOT AN
OPTION”**

On 13 October 2016, the EP ITRE Committee voted on the draft opinions of Rapporteurs Telička and Poche on the Commission proposals for amending the Waste Directive and a series of waste stream specific Directives, including Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE). The lead ENVI Committee is currently finalising the draft reports of its Rapporteur Bonafé on these legislative proposals in view of its committee vote end of January 2017.

In this position paper, Orgalime, which represents the interests as a whole of the industry impacted by the WEEE, RoHS and Ecodesign Directives, presents its key observations on the ongoing EP work on these reports and calls for the support of European regulators for its recommendations for the way forward, in particular with a view to ensuring that one of the four freedoms of the EU, namely the Internal Market is not undermined by the reports on the proposals:

1. Ambition on as strategic an issue as Circular Economy form both, an environmental and economic perspective, can only be supported.

Orgalime fully supports the following proposals adopted by the ITRE Committee, which are also under consideration in the ENVI Committee:

- **Amendments to tighten the EU’s landfill policy:** We strongly support a complete landfill ban for waste that is recyclable and/or subject to specific EU waste management legislation, such as Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE) or Directive 2013/56 on Waste Batteries and Accumulators. As long as waste appliances are still landfilled, efforts made on the design of products will not translate into environmental gains or economic incentives but just into costs for manufacturers and consumers.
- **Amendments that call for a proper implementation and enforcement of the existing EU waste legislation,** notably in the area of waste shipments, recycling and recovery targets and waste treatment. Repair, reuse and recycling of products can be negatively impacted as long as waste appliances are still illegally shipped outside Europe. This is still the case for electrical and electronic equipment (EEE).

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

Efforts made on the design of products will at best not bring benefits in Europe and at worst not translate into environmental gains, while inevitably giving rise to costs for manufacturers and consumers.

- **Amendments that call on the Commission to make existing EU harmonised standards for the treatment of WEEE binding:** not only quantities of secondary raw materials matter for a Circular Economy to develop, but also their quality. This will decide if it is technically feasible and also responsible from an environmental and ethical point of view to use them in a next generation of products or not. Circular Economy implementation must allow product manufacturers to comply with existing product legislation, and chemicals legislation such as the REACH Regulation 1907/2006/EU or Directive 2011/65/EU on the restriction of the use of certain dangerous substances in electrical and electronic equipment (RoHS) in particular. Calling for a level playing field for the treatment of waste no matter where in Europe makes perfect sense. It is supportive of the acceptance of Circular Economy policy objectives.
- **Amendments that acknowledge that producer financing obligations should focus on aspects under their control or influence** to prevent misuse or unfair market practices.
- **Amendments that aim at clearly defining the roles and responsibilities of the different actors in the waste management chain.**
- **Amendments promoting industrial symbiosis** to reduce waste generation and landfilling and to keep valuable materials in the value chain for the longest time possible.

Consequently, Orgalime asks you to SUPPORT the following amendments:

[ITRE Poche Opinion on the proposal for amending Directive 2008/98/EC on Waste:](#)

9, 15, 20, 24, 25, 27, 29, 31, 42, 58, 64, 67 and 74.

[ITRE Telička Opinion on the proposal for amending a series of waste stream specific Directives, including Directive 2012/19/EU on Waste Electrical and Electronic Equipment \(WEEE\):](#) 6, 16 and 28.

[ENVI Draft Bonafé Report on the proposal for amending Directive 2008/98/EC on Waste:](#) 35, 47, 48, 73, 78, 79, 84, 150, 198, 204, 219, 227, 228, 233, 239, 240, 241, 248, 337- 339, 378, 379, 381, 382, 404-407, 417-422, 453, 526, 527, 537, 570, 617, 622, 623, 625, 633, 645, 646, 648, 660, 668-670, 677, 682, 693, 709, 722, 724, 725, 733, 734, 754-777, 792, 794, 817, 823, 827, 833, 852, 887, 967, 978, 979, 1177, 1276, 1277 and 1285.

[ENVI Draft Bonafé Report on the proposal for amending Directive 2008/98/EC on Waste on the proposal for amending a series of waste stream specific Directives, including Directive 2012/19/EU on Waste Electrical and Electronic Equipment \(WEEE\):](#) 25, 33, 37, 59, 79, 80, 85 and 86.

2. **European technology manufacturers represented by Orgalime are, however, concerned with a series of EP amendment suggestions that, if finally adopted, would result in a major challenge to one of the EU's core freedoms and greatest achievements, namely the functioning of the Internal Market:**

2.1 We particularly see this threat arising from the following EP proposals for the following reasons:

- **EP amendment suggestions for revising the Waste Directive:**
 - **Article 8.2 on Member States Extended Producer Responsibility (EPR) measures:** The EP suggestions to introduce product design measures at national level risks giving rise to 28 different product standards in the EU, thereby undermining a level playing field for both, product manufacturers and recyclers.
 - **Article 8a (new) on EPR schemes:** EP suggestions to make EPR schemes responsible for product design measures in our view disrupts the internal market while it also creates a conflict of interest and raises concerns in the light of EU competition law. We remind regulators that the role of WEEE EPR schemes is to arrange for the physical take back and end of pipe management of WEEE on behalf of producers. In addition it must be noted that producer responsibility can be transposed not only by means of EPR “schemes” but equally in the organizational form of individual producer responsibility solutions.
 - **Article 9 on prevention of waste:** Suggestions that Member States should take measures to reduce the content of hazardous substances in materials and products is equally incompatible with the functioning of the Internal Market. In addition, this interferes with existing, fully harmonised EU chemicals legislation, notably REACH Regulation as the appropriate legal instrument to assess and where necessary regulate on the use of hazardous substances in products. For waste electrical and electronic equipment (WEEE), there also exists the sector specific Directive 2011/65/EU (“RoHS”), which restricts the use of hazardous substances in EEE and is fully harmonised in the EU. Four additional substance restrictions have just been added in 2016 to the existing list of six restricted substances.

- **EP amendment suggestions for both, revising the Waste and revising the WEEE Directives:**
 - **A new Annex to list Circular Economy Instruments** requiring Member States to regulate on the design of products and to set “recycled content” measures.

2.2 Interferences with the existing Ecodesign Directive and relaunched implementation work

We highlight that out of the existing 29 finally adopted ecodesign implementing measures under Directive 2009/125/EC (Ecodesign Directive), 21 measures already include resource efficiency requirements:

- 7 measures include information requirements on disassembly and/or disposal at end of life;
- 3 measures include maintenance or disassembly instructions or information requirements;
- 3 measures include information requirements on hazardous substances (mercury/lead);
- 4 measures set noise requirements;
- 2 measures also regulate emissions to air and NOx;
- 1 measure sets a durability requirement and
- 1 measure includes requirements on water consumption.

Moreover, in the context of its Circular Economy Action Plan work, the Commission has issued a Material Efficiency Standardisation Mandate to European Standardisation Organisations with the request that they develop generic standards, which cover ecodesign requirements related to material efficiency aspects (such as recyclability, recoverability and reusability, durability, reversible disassembly and end of life extraction time) for any product group listed in the Article 16 of the Ecodesign Directive itself. The appropriate committees of European Standardisation Organisations have already taken up their work.

Finally, on 30 November 2016, the Commission has tabled a new ecodesign package as part of its comprehensive “Clean Energy For All Europeans” Package, including, among other, the new Ecodesign Working Plan 2016-2019.

Therefore, we consider it neither necessary nor appropriate to address product design aspects also in the pending EU waste policy proposals that are based on article 192 of the EU Treaty and therefore not fully harmonised in the EU: these would hamper the free circulation of goods in the Internal Market, which is neither good for the environment, nor good for consumers or industry.

Also, promoting end-of-life product parameters in waste legislation in isolation without embedding them into a wider life cycle perspective would clearly expose consumers to the risk of shifting environmental problems from the waste phase to other life cycle stages of the product. This would rather undermine than strengthen today’s success and credibility of the Ecodesign Directive.

“Recycled content” measures are particularly sensitive in this respect, as recent cases in the Netherlands about the potential health hazards of certain recycled rubber granules used as infill in artificial turf have just shown.

2.3 Openness for various options of waste management schemes needed at the level of a horizontal Waste Framework

Finally, pushing deposit schemes for any product is in our view ill-designed and insufficiently recognises the differences that exist between different products, including their lifetimes in particular. The longer a product’s lifetime – and many capital goods have lifetimes of several decades - the less appropriate a deposit scheme is: it unnecessarily blocs huge amounts of money that could be invested elsewhere in the meantime, while administrative burden on both, industry and customers, would often be significant. As far as WEEE is concerned, deposit schemes are one option among several for producer’s to guarantee proper end of waste management of waste EEE. This optional approach should also be chosen at the level of the horizontal Waste Directive.

Consequently, Orgalime urges you to REJECT the following amendments:

[ITRE Poche Opinion on the proposal for amending Directive 2008/98/EC on Waste:](#)

- Amendments related to internal market concerns: 8, 10, 49, 56, 62, 75, 109 and 115.
- Amendments related to other issues of concern: 41, 59, 60 and 84.

[ITRE Telička Opinion on the proposal for amending a series of waste stream specific Directives, including Directive 2012/19/EU on Waste Electrical and Electronic Equipment \(WEEE\):](#)

- Amendments related to internal market concerns: 13, 17, 20, 31, 32, 34 and 35.

ENVI Draft Bonafé Report on the proposal for amending Directive 2008/98/EC on Waste:

- Amendments related to internal market concerns: 10-13, 67-70, 74, 77, 81, 82, 85-89, 92-96, 103, 207, 215, 222, 224-226, 229, 232, 234-238, 522, 529, 530, 610, 611, 613-616, 618-621, 624, 627, 630-632, 634-636 638-644, 663-667, 671-676, 679, 680, 686, 689-692, 695-697, 700, 710, 715, 720, 723, 728-730, 759, 760, 764, 766, 767, 769, 770-776, 778, 780-790, 793, 797-800, 802, 838-841, 843, 863, 879-881, 916-919 and 1304-1306.
- Amendments related to other issues of concern: 16, 18, 20, 21, 38, 21, 111, 114, 115, 127, 145, 156, 167, 250, 289, 297, 330, 340, 357, 438, 439, 440-452, 455-460, 523-525, 528, 531, 532, 649, 929, 949, 958, 960, 961, 972-975, 981, 982, 995, 1023, 1268 and 1269.

ENVI Draft Bonafé Report on the proposal for amending Directive 2008/98/EC on Waste on the proposal for amending a series of waste stream specific Directives, including Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE):

- Amendments related to internal market concerns: 22, 29, 62, 68, 93, 94 and 95.
- Amendments related to other issues of concern: 15, 17, 24, 31, 32, 35, 46, 66, 67, 69-72, 74, 75-78, 82, 83 and 91.

3. CONCLUSIONS

A functioning Single Market is as much a benefit for European citizens and consumers as it is for the industry and the environment, and it is Europe's best asset in times of increasing globalisation. According to the Commission, the Single Market has added 2.77 million jobs and contributes 233 billion EUR to the EU GDP.

We therefore call upon European regulators to abstain from weakening the undisputed economic and environmental opportunities of a better use of resources and a Circular Economy by dismantling Europe's internal market, which has been instrumental for the creating prosperity, welfare, jobs and growth in Europe.

Orgalime urges MEPs to particularly stop the increasing trend of proposing to regulate product aspects in waste legislation, at national level by Member States or by EPR schemes. Multiple layers of requirements will lead to diverging, contradictory, overlapping product standards in the different Member States. This in our view is an erroneous concept as such but even more so in times when our societal challenges require common answers and solutions based on scientific evidence and other important factors, such as consumer acceptance and affordability.

To effectively help in closing the loop, we recommend to European Regulators:

- To place much **more emphasis on improving the quality of recycling streams: minimum quality criteria for secondary raw materials** should be set and **investments should be stirred into modernised waste management infrastructures, including digital solutions**, to spur cleaner waste streams fit for market take up without compromising other environmental deliverables, notably responsible chemicals management.
- **Any minimum requirements for Extended Producer Responsibility Schemes** at the level of a horizontal Waste Framework Directive need to be sufficiently generic and flexible to allow for accommodating the many different sector specific challenges, needs and issues case by case in appropriate manner. What suits one EPR scheme can be counterproductive for another one.

The European Engineering Industries Association

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org

Ass. Intern. A.R. 12.7.74 | VAT BE 0414 341 438

For the particular case of the WEEE Directive, we mind that it has been recast rather recently and that its transposition in Member States remains far from being completed. Therefore, a too early WEEE review would affect legal stability. We also mind the inherent differences of waste streams from consumer products and waste streams from business to business products. For these, more often than not contractual arrangements between the affected professional business partners address end of life issues of such equipment in an appropriate way.

- **Making all actors handling waste respect the spirit of EU waste legislation is a prerequisite for achieving fairness and fitness for purpose:** producers have to comply with their EPR obligations. To be most effective, they however often depend on the good will of other actors that (more often than not illegally) handle waste fraction, especially valuable ones for economic reasons. Giving unscrupulous market players a carte blanche to invoice any cost to producers is simply unfair and ends up being destructive of EU manufacturing jobs. **Therefore we advocate for complementing EPR obligations with “shared responsibility obligations” for all actors in all steps of the WEEE management chain.**
- Introducing **WEEE reporting obligations** would also be a desirable complement to existing provisions so that the EU’s waste statistics will be more accurately reflecting how much WEEE is indeed legally treated in Europe. Today, these statistics do not reflect reality – we are actually doing much better than what official statistics report.

We trust that European Regulators will shape the pending Waste proposals in a way that will reconcile environmental ambition with economic and factual realities in order to arrive at overall sustainable results to the benefit of European citizens, the environment and Europe’s leading manufacturing sector employing over 10.9 million people in the EU.



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ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
 Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
 Ass. Intern. A.R. 12.7.74 | VAT BE 0414 341 438