



ORGALIME POSITION PAPER ON

Directive 2002/96/EC (WEEE):

COORDINATION OF NATIONAL REGISTERS OF PRODUCERS

Brussels, 9 June 2006

1. WHAT IS THE PROBLEM?

The present situation...

Article 12.1 of Directive 2002/96/EC (WEEE) obliges member states to draw up a register of producers.

Some 3 years after the entry force of the directive, **9 out of 25 EU member states have no national register** in place yet (in some of these countries, national transposition laws may include first (generic) provisions for the transposition of the requirement of article 12 WEEE).

The transposition laws of **16 out of 25 EU member states actually include provisions regarding the national register of producers**. Some of these, however, still need to be followed up by additional national sub-decrees to complete transposition as to the requirement to establish a national register (see Orgalime overview on national registers and information on collective systems in member states).

If national transposition laws include such provisions, these significantly diverge from member state to member state in highly relevant areas, including the following:

- **WHO** has to register at each of the yet to be established national registers? Or in other words, how does the member state transpose the definition of the producer?
- **WHAT DEADLINES** do apply to companies for registration?
- **WHAT DATA AND INFORMATION** is required to be submitted by manufacturers and **WHEN**?
- Does the national register request the payment of a **FEE**? If yes, at what level and who has to pay the fee?

The consequences...

Such divergences in national transpositions of article 12 WEEE resulting from the WEEE directive

- undermine key principles enshrined in the EC Treaty, such as the functioning of the internal market and the free movement of goods in the internal market,
- clearly weaken the implementation of the directive and therefore the realisation of the environment objectives pursued by the WEEE directive,
- negatively impact the competitiveness of EU manufacturers of electrical and electronic goods.

For our industry, different registration rules and requirements cause additional burden, administrative economic and legal, when operating in the internal market. This, for example, becomes evident regarding the following aspects:

- Companies, including SMEs, need to gather information on rules established in 25 member states (e.g.: Whom to contact? Who has to register? Where does the registration have to take place? What data must be submitted? What deadlines apply? Etc.),
- Companies, including SMEs, are required to create an authorised representatives or even an own local representation in certain Member States, where direct registration is not allowed. If not, distributors not willing to register themselves could stop commercial cooperation.
- Companies, including SMEs, should register with (at least) 25 different registers, with more than (at least) 25 different registration requirements. Often relevant webpages and procedures are available in national language only and registration plus relevant documentation must be submitted in national language. Registration procedures as such differ from country to country. Such practical hurdles render registration difficult, complex and costly for companies, and SMEs in particular.
- Companies, including SMEs, could be requested to provide guarantees in 25 different Member States, with (at least) 25 different modalities, including necessity of opening a bank account in that Member State without having a legal representative in that country. Besides, the link between registration and payment of guarantees brings with it the risk of multiple payments being made by companies for the same product in several member states.
- Companies are required to gather and submit data, certain of which often do not exist (e.g.: one country has asked a company for "average composition of their product", another one refer to "net-waste definitions" while others do not need to register by weight at all).
- Companies, including SMEs, should register with (at least) 25 different collective schemes or even more depending on the product categories.
- Member states establish different data requirements, which can result in restriction of free movement of goods and an infringement of internal market principles, especially where registration is a pre-requisite for placing a product on the market.
- Some member states charge fees for registration, others do not. Where fees are charged, these vary greatly. Some member states foresee penalties, which also vary greatly.

For national regulators, diverging structures and habits of national registers will render it more complex and difficult for member states to meet their reporting obligations set up by the WEEE directive (article 12.1, paragraph 3). Besides, member states would miss the opportunity to explore the potential for avoiding illegal actors while at the same time weakening enforcement of the directive.

For the European Commission, the quality and representativity of submitted data will be a prerequisite for carrying out a valid analysis. Data based on diverging criteria will not be comparable or allow valid conclusions.

For consumers, potentially higher product prices could arise due to the inefficiency of national registers.

For the environment, products will be less traceable, which would be at the disadvantage of the implementation of the WEEE directive.

In conclusion...

While the legal base of Directive 2002/96/EC (WEEE), namely article 175 of the EC Treaty, grants member states a certain flexibility in transposing the directive, including for article 12, the use of this flexibility must by no means result in infringing key principles enshrined in the EC Treaty, in particular the functioning of the internal market and the free movement of goods therein. Forcing companies to submit (at least) 25 registrations in Europe, which establish different requirements, in our view leads to restricting market access for companies within the internal market and clearly runs counter to the principle of free circulation of goods. We question the proportionality of the registration requirements of the WEEE directive.

2. WHAT WAY FORWARD?

Orgalime has repeatedly advocated at national and EU level to establish a **common ground of understanding between member states, but also between member states and the European Commission**, regarding key principles of the national registers:

While we stressed the irrelevance of who actually runs a register, we advocated for a common understanding and as high as possible degree of harmonisation across member states for

- Having the same procedures for national registers,
- Having the same functionalities for national registers
- Having the same requirements for national registers and
- How national registers can interact with each other

as a prerequisite for both, avoid infringing internal market principles and exploring the potential benefits of registration to a maximum.

Same procedures should in our view particularly include the same data asked for, the same frequency of occurrence of specific data asked for...

Same functionalities should in our view mean effective tracing of free-riders and preparing the grounds for efficient market-surveillance mechanisms...

Same requirements would in our view be necessary with regard to the definitions of single "types of equipment" in so far they are requested by member states¹. Likewise, we would recommend that there would be a harmonised approach to information concerning data relating to operations across national border (pan EU-producer activities, e.g.: sales and across border or distance selling to private end users) in the internal market (e.g.: with/without accessories, manuals, packaging, batteries etc), providing a harmonised scope at this level across Europe.

Interaction of national registers should in our view have been organised by finding a way of cooperation and coordination of national registers (by working together and/or by a coordinating within a (European) structure).

Provided agreement of member states and the European Commission on these fundamental principles, as a next step, it would become necessary to foster agreement across Europe regarding:

- **One pan-EU data content**
- **One pan-EU data format**
- **One pan-EU data handling for registration and reporting.**

To address some immediate concerns at short term, Orgalime suggests working towards a **standardised format for registration** (see Orgalime proposal annex 1) and a **standardised format for reporting of producers to member states/WEEE systems following article 12 WEEE and COM decision 2005/369/EC** (see Orgalime proposal annex 2).

In so far as the internal market is infringed, however, and considering the failure of establishing such a coordinated view cross member states in the last 3 years since adoption of the directive, **ORGALIME supports the request expressed at the European Parliament's Environment Committee meeting on 23 January 2006 for an amendment of the WEEE directive that fully respects the principles established by the EC Treaty.**

3. CONCLUSION

From an industry perspective, registration in the first place implies additional costs and additional administrative burden. It is therefore important when putting registration into practice to do it in a correct way. If it is done properly, registration can offer opportunities with benefits to all, the industry, national and EU authorities, consumers and the environment.

We urge regulators, both, national and EU to solve this issue as a matter of utmost priority.

¹ The directive and COM decision both require reporting of product categories according to annex IA of the WEEE directive with a sub-category 5.a „gas discharge lamps“. Some member states have specified the need to report on „types of equipment“. In so far as this is deemed necessary, there should be a harmonised definition of „type of equipment“ between member states and the industry association representing the product category with a clear categorisation whether such equipment is E2B or E2C. In the context of reviewing the WEEE directive, Orgalime would urge the Commission to propose as simple as possible a solution, which is harmonised.

**Annex 1: ORGALIME Proposal for a
Standardised Form for the Registration of Producers
under Article 12 of Directive 2002/96/EC (WEEE)**

Brussels, 9 June 2006

A. Identification of the registration		
Date of registration (YYYY-MM-DD)		
Registration number ¹		
Indicate if this is a first registration, a change of information, a discontinuation or a withdrawal of a registration ² :		
<input type="checkbox"/> first	<input type="checkbox"/> change of address	<input type="checkbox"/> discontinuation by producer
	<input type="checkbox"/> significant change of product	<input type="checkbox"/> withdrawal by Competent Authority
If change, discontinuation or withdrawal provide previous registration number:		
Status of the organization making this registration application:		
B. Identification of the Producer		
Producer name, long		
Producer name, short (if different)		
Country code ³		
City		
Postal code		
Office address (Street, number) or PO box (if applicable)		
Name of contact person responsible		Telephone number
Fax number		E-mail
C. Identification of the concerned equipment		
Category as listed in WEEE directive annex IA and COM decision 2005/369/EC ⁴		

I affirm that the information given above is correct to the best of my knowledge.

City.....

Date.....

Name and signature of responsible person.....

¹ To be assigned by the Competent Authority.

² "Change" must be marked for all types of reported changes. Only one change may be reported per notification of change (e.g. either change of address or discontinuation / withdrawal of EEE).

- change of address: A notification of change concerning the address must contain the relevant producer *code* and the complete address block to be changed. No further data should be submitted.
- significant change of product: In case a significant change of EEE is reported, "change of product" must be marked and the "previous registration number" must be given. The form must be filled in completely (the definition of significant change must be generated).
- discontinuation by producer: Discontinuation of placing on the market.
- Withdrawal by Competent Authority: Withdrawal of EEE or group of EEE.

³ Two-letter code of ISO 3166 (1993), e.g.:

AT	...Austria	GR	...Greece
AU	...Australia	IE	...Ireland
BE	...Belgium	IS	...Iceland
CA	...Canada	IT	...Italy
CH	...Switzerland	LI	...Liechtenstein
DE	...Germany	LU	...Luxembourg
DK	...Denmark	NL	...Netherlands
ES	...Spain	NO	...Norway
FI	...Finland	PT	...Portugal
FR	...France	SE	...Sweden
GB	...United Kingdom	TR	...Turkey

⁴ The WEEE directive and COM decision both require reporting of product categories according to annex IA of the WEEE directive with a sub-category 5.a „gas discharge lamps“. Some member states have specified the need to report on „types of equipment“. In so far as this is deemed necessary, there should be a **harmonised definition of „type of equipment“ between member states and the industry association representing the product category with a clear categorisation whether such equipment is B2B or B2C**. In the context of reviewing the WEEE directive, Orgalime would urge the Commission to propose as simple as possible a solution, which is harmonised.

**Annex 2: ORGALIME Proposal for a
Format concerning Reporting of Producers
to Member States/WEEE Systems
following Article 12 of Directive 2002/96/EC (WEEE)
and Commission Decision 2005/369/EC¹**

Brussels, 9 June 2006

A. Identification of the Producer	
Registration number ²	
Producer name, long	
Producer name, short (if different)	
Country code ³	
City	
Postal code	
Office address (Street, number) or PO box (if applicable)	
Name of contact person responsible	Telephone number
Fax number	E-mail
C. Identification of the concerned equipment	
Category as listed in WEEE directive annex IA and COM decision 2005/369/EC⁴	Quantity put on the market (total weight tonnes⁵; if this is not possible in numbers)
1. Large household appliances	
2. Small household appliances	
3. IT and telecommunications equipment	
4. Consumer equipment	
5. Lighting equipment	
5.a Gas discharge lamps	
6. Electrical and electronic tools	
7. Toys, leisure and sports equipment	
8. Medical devices	
9. Monitor and control equipment	
10. Automatic dispensers	

I affirm that the information given above is correct to the best of my knowledge.

City

Date

Name and signature of responsible person

¹ This proposal is made for the case where collective system(s) operate(s) and where the information regarding columns 2-7 of table 1 of COM decision 2005/369/EC is provided by the collective system(s). In case of individual producer responsibility (whether for WEEE from private households or for WEEE from users other than private households), the individual producer has to provide such additional information regarding his individual collection, re-use, recycling, recovery and export of collected waste to the member state's authority.

² To be assigned by competent authority

³ Two-letter code of ISO 3166 (1993), e.g.:

AT	...Austria	GR	...Greece
AU	...Australia	IE	...Ireland
BE	...Belgium	IS	...Iceland
CA	...Canada	IT	...Italy
CH	...Switzerland	LI	...Liechtenstein
DE	...Germany	LU	...Luxembourg
DK	...Denmark	NL	...Netherlands
ES	...Spain	NO	...Norway
FI	...Finland	PT	... Portugal
FR	...France	SE	...Sweden
GB	...United Kingdom	TR	...Turkey

⁴ The directive and COM decision both require reporting of product categories according to annex IA of the WEEE directive with a sub-category 5.a „gas discharge lamps“. Some member states have specified the need to report on „types of equipment“. In so far as this is deemed necessary, there should be a **harmonised definition of „type of equipment“ between member states and the industry association representing the product category with a clear categorisation whether such equipment is B2B or B2C**. In the context of reviewing the WEEE directive, Orgalime would urge the Commission to propose as simple as possible a solution, which is harmonised.

⁵ A **harmonised definition of „weight“** is essential (e.g.: with/without packaging, accessories, manuals, batteries etc.).