

*The Secretary General*

Mr Mogens Peter Carl  
Director General DG Environment  
European Commission  
B-1049 Brussels

Brussels, 24 July 2006

**Scope of Directives 2002/96/EC (WEEE) and 2002/95/EC (RoHS)  
Interpretative guideline « fixed installations »**

Dear Mr Carl,

We are writing to you as Orgalime is seriously concerned about the reopening of discussions on the scope of the above-mentioned directives and the application of the Commission's interpretative guideline on « fixed installations » in the Technical Adaptation Committee.

Orgalime underlines that, for the proper implementation of the directives, European electrical and electronics companies need stable, robust and consistent scope interpretation criteria, which apply equally in all EU member states. We are particularly concerned to see that such a harmonised approach is being questioned especially with regard to the interpretation of article 2.1 WEEE that, according to the Commission's F.A.Q.s, equally applies for RoHS.

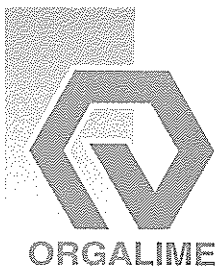
Article 2.1 WEEE states that equipment that is "part of another type of equipment that does not fall within the scope of this Directive" is itself excluded from the scope of the directive. In February 2005, the Commission, after lengthy discussions with member states, has published its F.A.Q.s which state that "fixed installations" are to be considered as such "other types of equipment, which do not fall under the scope of the directive". Furthermore, the Commission provides a definition for "fixed installations" which is both clear and consistent with other legislation applying on the same products. The Commission equally clarifies that it is insufficient to only consider whether the equipment is "fixed or not" in order to exclude a particular equipment from the scope.

Orgalime's Guide to practically understand the scope of directives 2002/96/EC (WEEE) and 2002/95/EC (RoHS)<sup>1</sup> is fully built on this understanding and aims through the examples it gives to further underpin the Commission's position. We are concerned that any departure from this understanding at this moment in time would significantly disrupt our industry's implementation process while at the same time disregarding the spirit of the WEEE directive:

- The notion "fixed installation" is a settled term that is derived from existing Community law that applies equally to the same products subject to WEEE.
- If fixed installations were considered to fall under the scope of WEEE, as some authorities seem to argue, this would mean that installations in petrochemical,

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<sup>1</sup> ORGALIME Guide « A practical Guide to understanding the scope of Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) and Directive 2002/95/EC on the Restriction of the use of Certain Hazardous Substances in EEE (RoHS) of January 2006, as amended in March 2006 and available at [www.orgalime.org](http://www.orgalime.org)



automobile manufacturing, pharmaceutical, material handling, power generation, water treatment or paper manufacturing plants would be subject to WEEE. This clearly was not the intention of the WEEE directive when it was adopted.

- Article 2.1 refers to all categories listed in annex I.A of the WEEE directive. The criterion of "another type of equipment" and its additional interpretation guideline of "fixed installations" therefore cannot be limited to a selected number of WEEE categories, but must be horizontally applied as a criterion on its own right. It must therefore be handled completely separately from the exclusion of "large-scale stationary industrial tools" as in category 6 of Annex IA/IB of the WEEE directive.

In addition, the WEEE directive follows the principle that it applies to finished products, not to components. This is also valid for electrical installations: we therefore understand that components of electrical installations are excluded from the scope; as finished products, however, such as professional lighting equipment or user terminals, they could be in the scope (see examples of components of electrical installations and finished products given in annex A of Orgalime's scope guide).

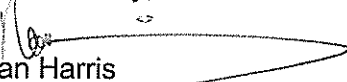
Very important too is the fact that the interpretation of the scope of the WEEE directive directly is the basis for interpreting the scope of the RoHS directive, which is based on Article 95. Any misinterpretation would therefore directly bring up internal market questions.

To conclude, we believe that the present wording of the Commission's F.A.Q.s in this field is both clear and consistent, since it is based upon existing Community law. In our view, it does not require any modification. We therefore call upon the Commission to fully endorse its own guidelines and to take the necessary steps to ensure that member states should not depart from these criteria developed by the Commission in collaboration with them.

We very much hope that the Commission will indeed ensure that this complex legislation does not end up generating unnecessary complexity, undermining the internal market and therefore the competitiveness of manufacturers in the EU.

We would be happy to discuss this matter further with you and remain at your disposal for any further information.

Yours sincerely,

  
Adrian Harris

*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.*

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