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Improving Registration of Producers in the Directive on Waste Electrical and Electronic Equipment (WEEE)

In the context of the ongoing recast of Directive 2002/96/EC on WEEE, regulators are currently discussing how to improve the requirements of the Directive regarding registration of producers (article 16).

Orgalime believes that shaping WEEE registration in the right way can significantly contribute to cutting unnecessary administrative burden and costs of the Directive and thereby improve the Directive in terms of Better Regulation.

We would like to stress three core aspects, which need to be taken into account for the debate:

- **Registration** (described in Art. 16 WEEE) is a **tool for enforcement and monitoring** and therefore to avoid free-riders.
- **Compliance Schemes** (addressed basically in Art. 12 WEEE) are responsible for organising **and financing the take-back and recycling obligations** of affected manufacturers.
- Notwithstanding that in some member states there can be certain links between compliance schemes and the national register (e.g.: in the UK, where producers have to join a compliance scheme and register via the compliance scheme with the Environment Agency), **registration is in no way identical with compliance schemes.**

Industry fully supports the following objectives for shaping registration under WEEE:

- To reduce administrative burden of registration and reporting procedures and related costs while at the same time improve the enforceability of the directive and avoid free riding.
- To keep the administrative burden related to registration at national level at the minimum necessary to secure the enforceability of the directive and to avoid free-riding.
- That companies should not be obliged to have a legal seat in each member state where they have to fulfill waste related obligations and therefore have to register.
- That multiple payments of recycling fees for the same single product should not occur.
- That national registers should better exchange information in the future, including on the quantities of EEE placed on their national market annually.
- That registration and reporting procedures should be better harmonised, and in particular that a harmonised format for electronic online registration should be established.

In the subsequent sections, we would like to summarise the main problems behind these topics today and bring forward Orgalime's suggestions for solutions to realise these objectives:

Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

1. No obligation to have a legal seat in each Member State

Problem:

- Forcing companies to have a legal entity within the territory of the Member State to fulfill the requirements of the Directive, as it is the case in several Member States today, is neither necessary for the transposition of the requirements of the WEEE directive nor compatible with the internal market established in the EC Treaty.
- For the purpose of strict enforcement in Member States, however, it is necessary that member states have a contact within their territory.

Solution:

- Where the producer is physically present in the Member State where the registration obligation occurs, he (or a third party acting on his behalf) is responsible to register.
- Where the producer is not physically present in the Member State where the registration obligation occurs;
 - His authorised representative or a resident WEEE agent (=WEEE representative) who places the product on the national market for the first time is responsible to register.
 - **In case distributors knowingly sell EEE from a non-registered producer**, or in case it is them transferring products from one member state to another (**intra Community trade**) they have to take over the same responsibilities as the WEEE resident agent/representative.

2. No double payments of recycling fees for the same product while abstaining from introducing an unnecessary “reimbursement scheme”

Problem:

- There is a lot of confusion surrounding the claim that multiple "payments" for same products occur. There are generally the following payments arising from the WEEE Directive:
 1. Recycling fee
 2. Financial guarantee
 3. Registration fee

We feel that in the current discussions the difference between those payments tends to give rise to confusion.

- **Recycling fees:** These are the fees payed for the end of life treatment of a waste appliance to compliance schemes. Recycling fees can indeed occur several times for a product, notably if it is placed on the market in one member state and then transferred onto and sold in another member state (intra-Community trade). In this case, two different compliance schemes would charge fees. Multiple payments of recycling fees are therefore an issue of compliance schemes, but not payments arising in national registers or costs arising from registration! National registers never possess this money.
- **Financial guarantee:** The financial guarantee links to the recycling fee; however, it goes beyond it. It is an evidence that the producer has to bring (before he is allowed to place a product on the market) in order to demonstrate that the end of life operations relating to his product will be financed. It may take the form of participation in a compliance scheme, an insurance or a blocked bank account.

The financial guarantee also especially secures the financing of end of life treatment for waste appliances for which a producer no longer exists in the national market, for example due to bankruptcy or insolvency.

As for the recycling fee, the financial guarantee is by no means associated with registration, i.e.: national registers do not hold this money!

- **Registration fee:** In some member states, registers charge a certain fee, which is immediately used to cover their administrative costs; however such fees do not exist in each member state.

Registration fees are in no way associated with recycling fees and therefore not associated with any necessity for reimbursements! These are national administration costs depending on the WEEE management system put in place following the subsidiarity principle.

Solution:

- **Recycling fee:** Producers should indeed only pay once for the end of life treatment of their WEEE. However, instead of introducing complex (and in our view doubtful besides unnecessary) reimbursement schemes, **we suggest balancing out such costs INSIDE the compliance scheme(s) to which the producer has adhered.** This can be realised by **diminishing the payments made for a product** (that was then transferred outside the member state) **in the running reference period from the payments due for products for the next reference period.** This balancing out process of multiple paid recycling fees is a pure bilateral transaction between a producer and a compliance scheme (and not between registers).

Registers could help by exchanging information on the quantities of EEE placed on the market of a member state in a given year.

In the case of **individual take back**, the manufacturer will only be responsible for the waste of his own products at the moment when his products become waste and therefore, by the very nature of this concept, the necessity for reimbursements will not occur.

- **Financial guarantee:** Since these costs are also not associated to registration and never arise in the national registers, there is no money that needs to be reimbursed. These costs can be equally balanced out inside the relevant compliance scheme.
- **Registration fee:** While such fees should absolutely be kept to the minimum, we feel that they are at times indispensable to secure the enforceability of the directive through the just created WEEE national registers and the substantial investments made in setting them up.

3. No mixing of registration and take-back obligations

Problem:

Article 16.4 of the Commission recast proposal stipulates that the register can be operated by collective responsibility schemes. This is in our view erroneously mixing registration and take-back obligations and it creates a conflict of interest: while compliance schemes are responsible for fulfilling end of life obligations on the producer's behalf, the control whether these obligations have been carried out correctly should remain with member states. Otherwise, the one who has to fulfill an obligation will control himself, which we consider at best unwise, at worst unlawful. In case several compliance schemes are working in parallel, the one comprising the registration data will have an unjustified and illegal knowledge of sensitive business data.

Solution:

- **Delete article 16.4 of the Commission recast proposal**

4. Establishing harmonised formats for electronic online registration

Problem:

In the absence of common registration and reporting procedures between the different national registers and in the absence of any harmonised format for registration and reporting today, there are currently different procedures and formats applying in the different member states. This creates unnecessary administrative burden and costs for companies and weakens the enforcement of the Directive. It is particularly burdensome for SMEs.

Solution:

- Introduce a formal mechanism fostering cooperation on common registration and reporting procedures between the different national registers
- Establish a harmonised format for registration and reporting via article 16.3

5. Definitions of “producer”, “making available” and “placing on the market”

Problem:

- The WEEE Directive introduces two kinds of obligations at the same time:
 - Obligations to be fulfilled before a product can be placed on the market, AND
 - Obligations that occur only at the moment an appliance will become waste.
- Usually, EU legislation that includes obligations on products before they can be placed on the market follow a European approach (EU principle of free movement of goods). However, in the absence of a European internal market for waste (which regulators unfortunately refused to establish during the recent review of the Waste Framework Directive), waste management obligations have to exclusively be fulfilled at national level and therefore follow a national approach.
Since WEEE includes both elements, it is the challenge to bridge those two aspects in order to arrive at a maximum level of harmonisation where this is possible, while securing strict enforcement of national waste management obligations.
To secure this enforcement, Member States require a national contact on their territory (as described under section "2. Legal Seat").

Solution:

- **PREFERRED OPTION: the producer remains defined as today**, i.e.: as the person who places the EEE on the **national market of a Member State**. Consequently, also the definitions of “placing on the market” and “making available” would have to be national.
- **ALTERNATIVELY: The European producer definition provided in art. 3j of the Commission proposal is taken as a basis and amended by the introduction of a “resident agent/WEEE representative” for those obligations that occur at national level.**
- Obligations occurring at national level are those resulting from articles 5, 7, 8, 11, 12, 13 and 16.
- **In any case, there needs to be clarification:**
 - **in art. 3j that “Any distributor who sells electrical and electronic equipment from a non registered producer or WEEE representative shall be deemed a producer”, AND**
 - **in art. 16 that “a distributor making equipment available for the first time on a national territory from another Member State inside the Community (intra-community trade) either concludes an agreement with the producer or provides the registration and the financing of the management of WEEE arising from this equipment himself”.**

Orgalime looks forward to further contributing to the debate.