

**Brussels, 17 January 2008**

## **Orgalime Position Paper on First Reading Results on a Waste Directive: a modern, flexible and enforceable EU waste management policy**

In view of the upcoming second reading of the European Institutions on the future horizontal EU waste framework law, Orgalime has analysed the Council's Common Position on the proposal for a waste directive and the report of the EP established in first reading on 13 February 2007.

As a result, Orgalime seeks the support of regulators for establishing in their further proceedings a forward-looking EU waste management policy that builds upon life cycle thinking, sustainable use of resources, exploring the benefits of recovery and recycling to the greatest extent possible while ensuring cost efficiency and legal certainty for a flourishing EU engineering industry providing jobs to (more than 10.6 Mio) EU citizens in an ever growing internal market with a vast range of sustainable products available for the consumer to enjoy at affordable prices.

To realise these objectives, Orgalime wishes to contribute to the debate with the following comments and proposals:

### **1. FREE CIRCULATION OF GOODS IN THE INTERNAL MARKET**

It is a priority for Orgalime that a waste framework law established under article 175 of the EC Treaty should not conflict with measures that relate to the placing on the market of new products, such as fridges, washing machines, PCs, mobile phones, TVs, etc. According to the EC Treaty and subsequent jurisprudence, such product-related measures can only be adopted under article 95 of the EC Treaty to safeguard the free circulation of these products in the internal market to the benefit of the consumer. How a product performs, including on environmental aspects, indeed, is not an issue of relevance to a local market with its local constituency "only", but clearly of relevance beyond national borders, i.e.: for all citizens/consumers in the EU.

*Orgalime fully supports article 7.3 of the Common Position, which calls upon member states to consider the need of securing the functioning of the internal market.*

*Therefore:*

- *Orgalime would clearly favour a removal of any product-related measure from the draft waste directive.*

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.6 million people in the EU and in 2006 accounted for some €1,779 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.

- *If regulators do decide to include in the Waste Directive broader objectives of waste policy with respect to product design, then we would ask the regulator to clarify in the legal text of the waste directive that such objectives cannot be realised within the waste policy framework, but can and should only be implemented under legislation based upon article 95 of the EC Treaty, such as, for the European engineering industries, under the existing directive 2005/32/EC on Eco Design of Energy Using Products. Such an approach, would at the same time secure that no adverse environment impacts occurred over the life cycle of the product, which would not only include environmental aspects arising at the design phase and “design for recycling” in particular, but also all other environmental aspects that could occur at all other stages of the life cycle, such as production, transport, use or end of pipe treatment and disposal.*
- *In any case, article 7.2 of the Common Position should not be included in the final waste directive.  
Alternatively, article 7.2 of the Common Position should include a reference that “in the absence of harmonised Community legislation”, member states may take individual measures (...) and the notions “development” and “marketing of products” in article 7.2, paragraph 2 should be deleted.*

## **2. PRODUCER RESPONSIBILITY**

For the electrical and electronic industry, the principle of producer responsibility is established in directive 2002/96/EC on Waste electrical and electronic equipment. Likewise, other directives establish a similar responsibility for other industrial sectors, e.g.: End of Life Vehicles or the Batteries directives.

Orgalime industries have therefore gathered experience with the implementation of producer responsibility in practice, and we particularly welcome the flexibility provided in the WEEE directive which leaves the producer the choice to either fulfill his obligations individually or by joining a collective scheme, an approach that has also been backed up in the recent study carried out by UNU-EHS for the European Commission in view of the upcoming review of the WEEE directive.

However, while it is in principle interesting, the introduction of a horizontal principle of producer responsibility in the waste directive would, for our industry – the largest in the EU, create confusion for the further implementation of the WEEE directive, while at the same time create double and overlapping requirements that can easily result in non-enforceability and free riding.

*In order not to discourage companies in their further implementation of WEEE and to protect European companies from unfair competition, Orgalime requests regulators to clarify in article 7.4 of the Common Position that the Waste Directive applies without prejudice to existing waste stream specific legislation (lex specialis). The notion “or imports into the territory of the Community” should be added to article 7.1 of the Common Position.*

Producer responsibility immediately translates into financing obligations, including for collection of waste equipment. Orgalime believes that the final waste directive should not result in making European consumers and society at large pay twice for the same service; especially, producers should not be made responsible for financing aspects that are not under their control and which they can consequently not influence, for example the collection of waste from private households, while, municipalities already charge consumers for their waste collection structures. Producer responsibility can, however, continue to start from agreed collection points onwards. If producers were also to finance collection from private households, this would mean that it would be in their authority to organise collection, independently from any other take back provision.

*Orgalime requests the European institutions to support article 12 of the Common Position.*

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### 3. WASTE HIERARCHY

In the interest of avoiding adverse environmental effects, Orgalime advocates a sufficiently flexible application of the waste hierarchy that should represent a guiding principle rather than a general rule and that is built upon life cycle thinking. The introduction of mandatory life cycle assessment, however, coupled with cost benefit analysis to identify alternative treatment options, in our view would be too complex, burdensome and difficult to be implemented in practice, especially for SMEs. Orgalime also believes that incineration with use of the energy so generated represents a preferred option in comparison to disposal.

Notwithstanding the social benefits related to the re-use of products (before they become waste), Orgalime has a number of concerns on too strong an emphasis being placed on re-use:

- The term “re-use” itself is unclear, since it does not distinguish between a) products that are sold on by the consumer that owns the product to another consumer, and b) products that have been refurbished by other companies than the original producer and are then sold on to another consumer.
- In the latter case, we believe that refurbished products should remain as safe, functional and environmentally performing as comparable new products. In particular, minimum legal requirements should remain mandatory for such equipment to protect the consumer and the environment. Besides, the liability for any defects in the refurbished equipment can in our view no longer remain with the initial producer, since he had no influence on the refurbishment performed by another company.
- Re-use (which takes place before a product becomes waste) does not always represent the most environmentally effective measure. For example, re-use of electrical appliances easily conflicts with energy efficiency objectives given by the regulator at the same time: it may from an environmental standpoint be better to replace an old electrical/electronic appliance by a new appliance (since this will generally consume less energy) and to recover materials of value from the old appliance by proper waste management, instead of simply re-using the same old appliance.

*For these reasons, Orgalime calls for your support of article 11 and recital 28 of the Common Position.*

### 4. END OF WASTE CRITERIA

Orgalime welcomes the proposal for a mechanism to allow the possibility of clarifying when certain wastes cease to be waste and generally supports article 5 of the Common Position.

We particularly support the understanding given in recital 21 of the Common Position that any re-classification of waste as a secondary product/material or substance should not impact the calculation of collection, recycling or recovery targets established under existing waste stream specific legislation, such as WEEE, since the collection/recycling/recovery loop would have been closed prior to such re-classification taking place.

However, article 5.3 of the Common Position spells out the opposite when stating that “ waste which ceases to be waste ...shall also cease to be waste for the purpose of the recovery and recycling targets set out in directive(s) ...2002/96/EC ...and other relevant Community legislation”.

*Orgalime consequently proposes to replace article 5.3 of the Common Position by the wording of recital 21 of the Common Position. The proposal to develop guidelines when certain substances or objects would “become waste” in addition to end of waste criteria and a mechanism to distinguish*

*by-products from waste, however, is confusing. Recital 22 of the Common position could in our view be dropped.*

## **5. BY-PRODUCTS**

Including a mechanism to identify when certain products, materials or substances shall be considered as by-products rather than waste, as supported by the Council and the European Parliament, is in our view helpful for providing a level playing field and for improving legal certainty for industry operating in the EU. We also support that it should be environmental criteria that are relevant for the decision whether a specific product, material or substance could be re-classified as secondary product, material or substance. The reference to quality criteria, however, could in our view be abandoned, since market forces will decide, which product, material or substance can satisfy market needs.

In contrast to earlier text proposals, the Common position, in its article 4, refers to “substances or object” rather than “products, materials or substances” resulting from a production process. This is confusing.

Since the issue of by-products treads into the area of product policy, we believe that better harmonisation would be beneficial to the practical application of article 4 of the Common Position. More concretely, *Orgalime proposes to replace the term “may” by “shall” in article 4.1, first sentence of the Common Position.*

## **6. PRINCIPLES OF SELF SUFFICIENCY AND PROXIMITY**

Article 14 of the Common Position in our view conflicts with the existing Waste Shipment Regulation, which provides that member states can object (under certain conditions) to transboundary waste transport destined for disposal. A similar provision does, however, not exist for recovery.

Moreover, the derogation allowed for member states in article 14, paragraph 2 in our view runs counter to article 28f of the EC Treaty, since it risks distorting the internal market by extending the principles of proximity and self-sufficiency to recovery operations, including the cases where the incineration of (mixed) municipal waste is considered as recovery.

At the same time, article 14 runs counter to the principle of cost efficiency of recovery. Cost efficiency of recycling requires ONE European market.

*Orgalime advocates for the establishment of a single market for waste in the EU. Article 14 of the Common Position should be modified, i.e.: by deleting articles 14.1, paragraph 2 and 14.2.-3. Article 19 of the EP first reading report may serve as an alternative way forward.*

## **7. STAKEHOLDER CONSULTATION**

With reference to Better Regulation principles and in the interest of better transparency Orgalime believes that a regular and well defined dialogue on the implementation of the waste directive between the Commission and stakeholders should be established. In particular, for putting the waste directive into practice in an efficient and effective manner, we believe that it would be beneficial if the Commission, in the conduct of its activities under the waste directive, consulted stakeholders in a continuous and structured way.

*Orgalime therefore encourages the European Parliament to re-introduce article 47 of its first reading report.*

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*The European Engineering Industries Association*

## CONCLUSIONS

We encourage regulators to shape Europe's waste management framework in a sustainable manner that would secure the competitiveness of European engineering industries instead of adding on more layers of overlapping requirements that cannot be enforced and therefore contradict the institutions' own principles of Better Regulation and Simplification while at the same time not providing additional environmental benefit.

While Orgalime believes that the common position has established a sensible compromise on a number of important issues, including the waste hierarchy, we feel that in the areas of producer responsibility, the functioning of the internal market, self sufficiency and proximity, the establishment of end of waste criteria, by-products and stakeholder consultation the Common Position would still benefit from a further fine-tuning in second reading.

In particular, the Waste Directive, in its final form, should constitute a truly harmonised directive in areas where waste policy constitutes product policy, and a consistent and mature waste policy framework with clear, coherent and enforceable requirements that enables Europe to lead by example on waste management to the benefit of the environment, consumers and the competitiveness of European industry alike.



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