

Brussels, 27 October 2014

POLICY RECOMMENDATIONS ON THE CIRCULAR ECONOMY PACKAGE

EXECUTIVE SUMMARY

The efficient use of resources in both, production processes and products manufactured by Orgalime industries is innate, as resource inputs account for almost 50% of total production costs in our sector. Any proposed action, including legislative, in the area of resource efficiency and circular economy needs to build on industry driven action and focus on securing our sector's global competitiveness and its future contribution to Europe's jobs and growth agenda.

We agree with the importance that the Circular Economy Package (further on CEP) reserves to trade and research policy, to support the key objective of securing continuous and reliable access to raw materials and fair competition for European manufacturing, while making our own products and processes in Europe ever more intelligent and efficient. In addition, we support the suggested landfill ban and recommend its immediate implementation.

Improving and better harmonising national reporting obligations on the EU's waste policy acquis can also bring benefits. Nevertheless, we wish to remind that these obligations apply, and need to continue to apply, on Member States level, including the newly suggested article 16.5 of the WEEE Directive 2012/19/EU.

However, we call upon European regulators to assess whether and in how far CEP is indeed fit to support Europe's growth and jobs agenda in an open minded manner, and to strive for truly sustainable, market driven results, especially in the following areas:

- **CEP promotes waste policy objectives and end of life product measures in an isolated manner instead of pursuing a holistic approach in the interest of overall sustainability (environmental, economic and social).** This risks disturbing today's sensible EU product design policy approach of the Ecodesign Directive, which is based on cost efficiency, product functionality, environmental improvement from a life cycle perspective, and affordability for consumers. The existing Ecodesign Directive should be preserved, while imminent conflicts of different (product) policy objectives, including between the promoted resource efficiency parameters themselves (see annex of this paper) must be resolved.

Ecodesign should not be reduced to "design for recycling" but remain holistic to secure the ongoing implementation of the Ecodesign Directive on some 50 product groups of Orgalime's industries.

- **Linking product and waste policy via a new article 8.2 of the Waste Directive risks to fragment the EU internal market and to promote free riding:** product requirements need to be measurable, enforceable and fully harmonised at EU level, which is inevitably at stake with end-of-life product requirements.
- **The newly suggested binding definition of "Extended Producer Responsibility (EPR)" and minimum requirements for such EPR-schemes build on the outdated understanding of "waste as a cost"**. Instead, these should address today's reality that in our sector "waste has become a value" and that, as such, "other actors than producers" are increasingly involved in waste management activities for economic reasons. The challenge therefore is to ensure that the EU policy acquis and standards are also respected in these other routes and their actors. In addition, these new EPR definition and requirements rule into Member States' sovereignty in the area of waste management.

We specify our comments hereafter:

Orgalime, the European Engineering Industries Association, speaks for 40 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2013 accounted for some €1,800 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

1. INTRODUCTION

Resource efficiency represents an indispensable economic necessity for Orgalime industries. “*Creating more with less*” or “*delivering greater value with less input*” immediately reduces production costs, increases profitability and the competitiveness of our industry, where almost 50% of production costs relate to materials and resource input. To successfully withstand global competition, the European engineering industries represented by Orgalime, therefore have to drive resource efficiency on a daily basis in their businesses. This includes many different aspects, from achieving fair and reliable access to raw materials, handling complex trade scenarios with international trading partners, to improving material efficiency, energy efficiency, water efficiency or the end of pipe management of processes and products, or investing in R&D, etc...

Action in this area implies far reaching consequences for companies and Europe’s overall competitiveness and its jobs and growth agenda. It should therefore be carefully thought through and be based on solid data and evidence to ensure truly sustainable, market driven results that support industry’s own resource efficiency activities.

At this stage, the EU’s debate on resource efficiency is largely focusing on the Circular Economy Package (CEP) of July 2014, on which we comment in this paper specifically. We wish however to also refer to the following wider positions on resource efficiency which we have released previously:

- [Orgalime position paper on Resource Efficiency Indicators – 6 May 2014](#)
- [Orgalime position paper on Circular Economy & Waste Policy – 6 May 2014](#)

2. WHAT ARE THE OPPORTUNITIES OF CEP FOR ORGALIME INDUSTRIES?

Orgalime industries provide technological solutions to environmental challenges, including resource efficiency and the circular economy. Political visions that lead to increasing the commercial driving forces towards Circular Economy are therefore welcome. Companies also continuously strive to optimise their production processes, including their use of materials. Certain proposals in the CEP, such as promoting industrial symbiosis, could help to unleash further potential in Europe’s economy.

Progress in waste treatment is a key factor for successfully turning waste into resources. The proposed landfill ban is therefore a much welcomed step. Developing European standards for improving the quality of secondary raw materials would be another; however this is not suggested in the Package.

The ambition to improve the knowledge base for policy-making is also a positive step. It can support evidence-based policies. A better data and monitoring system of waste flows and treatment therefore would provide significant opportunities – under the condition that it should not lead to an increase in bureaucracy and on the cost of doing business.

Easy access to competitive raw materials, a fair global level playing field, the removal of trade barriers and the promotion of free trade of raw materials at an international level, efficient and reliable material flows between Europe and other regions of the world are highly critical issues for the competitiveness of our industrial sector. The trade and research policy related aspects mentioned in CEP bear indeed opportunities in terms of supporting Europe’s future security of supply.

While Europe has scarce supplies of primary raw materials, developing framework conditions for a competitive secondary raw materials market in Europe could be interesting. It is however important to be realistic and acknowledge that Europe will never be able to become self-sufficient at the level of resources. It also needs to be taken into account that the quality and price of secondary raw materials matter for the competitiveness of the value chain.

Therefore, where CEP strives for the promotion of the use of certain materials in products at the expense of others and/or does so without sufficient cost or quality considerations related to secondary raw materials, negative impacts on our industry can be expected.

The general understanding of a circular economy and the acknowledgement that CEP gives to the role of Green Public Procurement, promoting incentives, research and development, Horizon 2020 and SME participation in Horizon 2020 are indeed positive and supportive to industry's own resource efficiency measures. Green Public Procurement, however, needs to take into account life cycle costing.

Setting no numerical resource efficiency target at this stage has in our view also been a sensitive decision. Debating the issue of a resource efficiency headline target under the review of the EU 2020 Strategy will allow for a more integrated debate to identify whether and how resource efficiency and CEP in particular can support the 20% manufacturing target under the EU's Industrial Policy and its wider policy objectives.

3. WHAT ARE THE LEGISLATIVE SURROUNDINGS OF CEP?

Firstly, CEP is being added onto an already very dense legislative environment. For our sector, we name but a few environment and energy related directives: Waste Framework Directive, waste stream specific WEEE, End of Life Vehicles, Batteries and Packaging Directives, Waste Shipment Directive, Landfill Directive, REACH Regulation, sector specific RoHS Directive, Ecodesign and Energy Labelling (with implementing measures on some 50 different product groups on Orgalime industries), Ecolabel Regulation, Water Framework Directive, Industrial Emissions and National Emission Ceilings Directives or Noise Directive.

Secondly, the regulatory environment is often also contradictory, as we detail in annex.

Thirdly, the regulatory environment is unstable: directives are regularly reviewed and more often than not substantially revised after few years, thereby causing legal instability and uncertainty with impacts on industry's compliance programmes and investments.

Finally, legislation is also not always taking into account business realities. The CEP, for example, ignores two fundamental current trends relevant for our sector:

- The trend to an ever higher degree of customisation and individualisation of products with lower production volumes: With mass customisation, as is happening under the so-called "Industrie 4.0" or "smart industry" development, products, processes and systems are all becoming more flexible and faster, thereby enabling custom-made production. CEP, however, proposes a model for product regulation that functions on the basis of standardised products and standardised production processes.
- In the past, waste was a cost. Today, in our sector, however, waste has a value. In the area of waste electrical and electronic equipment (WEEE), some two thirds of WEEE flows are handled for economic reasons outside the official producer run waste management streams by different actors, such as scrap dealers, collectors or municipalities. These significant flows are outside the influence sphere of producers. The concept of producer responsibility that has been appropriate at a time when waste was considered of no value may therefore require careful reassessment in terms of its suitability for the future in the light of these new market realities (see [Orgalime Core Messages for the Transposition of the WEEE Recast into National Laws – 18 April 2013](#) and [Orgalime position paper on Circular Economy & Waste Policy – 6 May 2014](#)).

The CEP proposes to push for circular economy aspects and waste legislation issues to be addressed through existing environmental product legislation. Taking into account the regulatory reality in this area, every new provision included in an instrument can be expected to have a strong impact on others. As a result, it is becoming increasingly likely that our industry will be faced with ever more conflicting regulatory objectives and unenforceable requirements. Policy makers need to make sure that companies do not run this risk.

Conflicting regulatory objectives need to be addressed. This is, however, where the package falls short, as it, in particular, does not consider other important policy fields, such as energy efficiency.

4. PRODUCT POLICY, THE ECODSIGN DIRECTIVE AND THE LINK WITH WASTE POLICY

Product policy has traditionally been – for very good reasons – a case-by-case instrument. The CEP calls for **new resource efficiency requirements in product policy** (via the Ecodesign Directive) without in our view sufficiently reflecting this wisdom.

The current **Ecodesign Directive** is a success that is based on harmonisation and free circulation of goods in the EU internal market, and a careful consideration of achieving multiple objectives, namely: cost-efficiency, environmental improvement from a life cycle perspective in areas with significant potentials, affordability for consumers and other critical product parameters, including product functionality, safety or reliability. Today’s framework therefore strikes a delicate balance that is indispensable for our sector to remain both, competitive and innovative, and to ensure that consumers can enjoy and afford an as wide as possible variety of competitive products.

While this Directive is generally an instrument that can cover all life-cycle stages and aspects of a product, it should however not be reduced to the end of life phase, as CEP suggests. In particular, end-of-life design measures should not be promoted if not measureable, not enforceable or not qualifying against the criteria of article 15 of this Directive. Product design requirements need to live up to the existing high standard of the Directive or else should not be pursued.

As a result, it is in our view premature to set minimum requirements for material efficiency due to lack of data and methodology.

Pursuing isolated “design for recycling” measures also ignores today’s market reality of ever more waste appliances escaping from producer led waste take back schemes for economic reasons. The argument that producers who design their electrical and electronic equipment (EEE) for recycling would get a financial benefit end of pipe is therefore not meeting the reality. It means returning to a debate that we have long surpassed. Besides, only a holistic life cycle approach to product design can avoid the transfer of environmental problems from one life cycle stage to another.

Pushing “RRR” requirements, such as “dismantleability, recyclability-recoverability, reusability, recycled content” as stand-alone goals risks leading to many problems, such as those outlined above, but also many more, including liability issues in case product failure, the (non-) traceability of secondary raw materials, the non-measurability and subsequent unenforceability of “RRR” requirements. Consequently, this way forward risks causing detrimental impacts on our industry, while we yet remain to be convinced about their benefit for the environmental and the consumer (see [Orgalime position paper on Resource Efficiency Criteria & Eco Design Directive – 16 January 2012](#)). Reducing the understanding of Ecodesign to “design for recycling” risks negative impacts on our industry’s investment in energy efficiency improvements considering the ongoing ecodesign implementing on some 50 product groups. Energy efficiency improvements more often than not go hand in hand with more material and/or substance use.

Overall, we serious caution policy makers before widely addressing resource efficiency requirements in product policy.

In addition to our concerns on new resource efficiency product requirements, CEP also risks leading to a **fragmentation of the EU internal market for products** through the newly suggested article 8.2 of the waste directive. It would oblige Member States to take product design measures at national level despite the existence of agreed EU product policy acquis for our sector.

We are also concerned that the move towards **more product registration requirements** would be tied in with in our view the misguided idea of a product passport in future EU product policy. We have yet to see an analysis of the impact on industry in terms of increased red tape and in terms of impacts on Intellectual Property Rights (IPR). In any case, such an approach can by no means replace the urgent need of carrying out market surveillance and enforcement activities at national level.

CEP also proposes a new definition of **Extended Producer Responsibility (“EPR”)** via the proposal for an amendment of the waste directive. The suggested definition unfortunately does not take into account the practical reality that (high value) “wastes”, such as waste electrical and electronic equipment (WEEE), do not end up in official producer run schemes but are handled by other actors than producers. Therefore, the “all-actors” approach needs to be incorporated into today’s understanding of EPR to ensure that the agreed EU policy acquis and standards is also respected in these other streams handling WEEE.

Furthermore, the **suggested binding minimum requirements for EPR-schemes** rule into the sovereignty of the Member States. The impact on producers and existing take back schemes (notably WEEE, which has just been revised) risks being substantial, such as in the area of financing. Several of the proposed requirements go beyond the sphere of influence and control of producers (for example, including cleaning costs for littering by consumers) and should not form part of EPR.

5. AREAS OF THE CEP THAT REQUIRE BALANCING

Following our assessment of the CEP, Orgalime recommends to balance out the package as follows:

5.1 Get the policy framework right

- Pursue a holistic view that acknowledges its multiple facets of resource efficiency instead of pursuing an isolated focus on waste policy/product requirements related to the waste phase in CEP.
- Identify the strengths of European industry with respect to resource efficiency and develop Europe’s further policy in this area to further promote these strengths.
- Support assessing the need for a resource efficiency headline target in an integrated manner during the review of the EU 2020 Strategy in the interest of true sustainability: launch an inclusive, transparent analysis of the policy impacts of any such target, their cumulative impact and interaction with other policy objectives as well as their impacts on EU industry and its competitiveness (including on the EU’s 20% manufacturing target), before endeavouring on the debate of setting a numerical target.
- A purely weight based approach is misleading and risks leading to policy decisions that were not desired (see above discrimination aspects). Instead, initiate the development of a mix of indicators.
- Screen the EU’s existing environmental acquis to identify where it hinders resource efficiency and a circular economy by itself (see examples in annex), and remove these barriers before taking other action.
- The Ecodesign Directive is at the core of the initiative, but it should not be: the main focus should be on fostering global trade and fair access to markets, green public procurement on the basis of life cycle costing, promoting incentives, research and development, Horizon 2020 and SME participation in Horizon 2020.

5.2 Unlock investments

- Pursue a stronger focus on the uptake of existing technology taking into account that 70% of all resource efficiency potentials lie outside Europe: the proposal for innovative financial instruments, public procurement should make life cycle costing (thus the proof of cost-efficiency over the life-cycle of a product in application of LCA) a pre-condition; one idea would be to introduce competitive tendering programmes to use available funding more efficiently and to introduce a minimum requirement for the amortisation period of the funded measure.
- Make the public sector lead by example regarding demand for new technologies.

5.3 Get business on board

- Maintain the existing Ecodesign framework for our sector to protect its success, wide reaching credibility and industry's significant investments made: consequently, reject the respective ecodesign sections of the Communication, and reject the modifications proposed for article 8.2 of the amendment of the Waste Directive.
- Support that product requirements need to be measurable and enforceable.
- Abstain from introducing a product registration system.
- Pursue international technical standards coordination requirements between markets and thereby facilitate trade, which is insufficiently present in CEP today.
- Finish the environmental footprint methodology pilots first before driving this in our view unsuitable methodology into product design.
- Focus on the right sectors that bear indeed the highest improvement potential.
- Support the market driven development of a competitive EU secondary raw materials market through technology and process development and without discriminating between materials, industrial sectors or technologies.
- Introduce quality standards for secondary raw materials based on ISO or EN standards.

5.4 Properly address the challenges in the Waste acquis

- Support the suggested landfill ban
- Modify the EPR definition suggested in article 8.1a (new) of the Waste Directive amendment to include the "all-actors" concept and ensure that all WEEE collected is indeed reported and properly treated at the end of life stage.
- Delete the suggested annex to the Waste Directive concerning minimum requirements for EPR schemes, or at least turn this Annex into a non-binding guideline, as was initially envisaged to respect the sovereignty of Member States.
- Focus on the initiatives that reduce today's differences between national waste markets and create more balance in competition, considering Commission estimates that 18 Member States do not meet the current requirements of the waste and the landfill directives.
- Strive for the right balance between recycling and energy recovery of waste, recycling quality, overall effects and environmental costs in the area of the EU's waste hierarchy as an instrument to promote waste management towards a circular economy - Choose the solution that is both, environmentally and economically viable. For certain types of waste, energy recovery may be the preferred option in comparison to low-quality recycling ("cascading").
- Provide incentives and promote research in market driven technology development.

Such conditions remain essential in order to ensure that the competitiveness of manufacturing is mainstreamed as required by the European Council of March 2014 in this core policy area and to support an overall sustainable EU jobs and growth agenda.

We look forward to further contributing to the debate.

ANNEX: EXAMPLES OF CONTRADICTIONARY LEGISLATIVE OBJECTIVES/REQUIREMENTS

- Energy efficiency improvements of products often go hand in hand with higher material use (for example the more energy efficient motors are, the more copper is needed)
- EU substance policy creates barriers for resource efficiency/circular economy, for example:
 - Restrictions of certain cooling refrigerants in air conditioning equipment force compromises at the level of energy efficiency.
 - The missing spare parts provision for electrical and electronic equipment (EEE) new in scope of the RoHS Directive 2011/65/EU (RoHS) renders such equipment “waste” earlier than necessary and therefore hinders reuse, repair, refurbishment, maintenance or upgrading of products.
 - The requirement to seek REACH authorisations for spare parts production in Europe due to the absence of a spare parts provision (“repair as produced”) in the REACH Regulation equally hinders such secondary market activities. At the same time reuse, refurbishment and repair often lead to compromises on energy efficiency, as new generations of equipment are usually more energy efficient.
 - The insufficient recognition of the fact that certain restricted substances will for historic reasons continue to be present in secondary raw materials in the application of EU substance restrictions (notably RoHS) hinders the reutilisation of such materials in new products.
 - The present wording of article 2.2 RoHS, which renders EEE “waste” earlier than necessary with the consequence that available and still workable products cannot be reused, repaired, maintained or upgraded, including in critical applications, such as hospitals, airplanes or power plants.
 - The suggested isolated focus on the waste phase of the current UBA RoHS substance restrictions methodology risks shifting environmental problems from one life cycle stage to another.
 - There are hindrances stemming from the definition of “waste”, end of waste criteria and substance policy measures (REACH Regulation/authorisation requirements of recycling industries), which impact the availability of recycled materials on the market (notably plastics).
 - The new rules for shipments of used EEE in the recast WEEE Directive hinder the refurbishment of electrical and electronic equipment, since certain items can only be legally shipped during the warranty period.
- Increased product durability means conflicts with light-weighting, energy efficiency, substances substitution and affordability of products.
- “Dismantleability” of products risks compromising product safety and European Intellectual Property Rights (IPR). Information requirements in this area risk giving rise to further bureaucracy and costs for product manufacturers, while manual dismantling is not a trend in recycling and will thus not be implemented. Further risks and costs will befall manufacturers for no good reason, while environmental gains will not be achieved.
- Different proposed resource efficiency parameters contradict each other:
 - Light-weighting (which often means more plastics) negatively impacts product durability. Appliances break more quickly and will have to be replaced more often than products containing heavier weight, but longer lasting materials.
 - Light-weighting and the push of ever lower quantities of valuable materials in products limit economic profitability of recycling activities, which will therefore not be carried out.
- The various resource efficiency product requirements more often than not cannot be measured and consequently cannot be enforced, which runs counter the objective of fair competition in the EU internal market for products and their free circulation therein.
- The EU’s resource efficiency policy today generally drives the economy towards ever more services. The latest economic crises has evidenced that it can only be manufacturing industry (the real economy) that can lift Europe out of the crisis. A mainly services driven resource efficiency policy therefore directly undermines the present Industrial renaissance policy, and the 20% manufacturing target in particular.