

Brussels, 6 May 2014

Circular Economy and the Review of the European Waste Management Targets

DG Environment has declared 2014 to be the European Year of the Circular Economy. In this context, it envisages to soon come forward with a Circular Economy Package, which aims, among other, to re-assess the existing European waste management targets in response to the review clauses set out in the Waste Framework, Landfill and Packaging Directives to ensure that they contribute to a more circular economy.

Orgalime, as the voice of European metalworking, mechanical engineering, electrical and electronic engineering industries, would like to provide its comments to the debate. We do so with a focus not only on the waste management directives under review, but also with a view to the wider existing regulatory framework applying to our sector.

For driving resource efficiency, a circular economy and the review of EU waste management targets forward, Orgalime asks for:

- Acknowledging our sectors active engagement and contribution to resource efficiency, which we consider an economic reality and necessity
- Promoting the following measures as a priority: striving for policy instruments that promote long-term profitable investments in Europe and business opportunities for European manufacturing industries including life cycle costing; an international approach involving standardisation and support for the deployment of existing technologies at global scale; the setting of waste collection and recycling targets; the setting of minimum quality standards for secondary raw materials; the establishment of harmonised treatment standards for priority waste streams through European standardisation organisations; a zero landfill policy and proper transposition, implementation, market surveillance and enforcement of the existing EU waste policy acquis in EU Member States; developing meaningful and appropriate resource efficiency indicators, especially before endeavouring to set targets.
- Striving for consistency of the EU waste policy review with the recently recast Directive 2012/19/EU on Waste Electrical and Electronic Equipment (“WEEE2”) and in particular with a view to not undermine the ongoing implementation of the WEEE2 Directive.
- Ironing out shortcomings and inconsistencies in EU environmental policy measures where in themselves they represent an obstacle to a circular economy, such as in the area of EU waste and substance policy.
- Seriously taking into account today’s market realities when assessing the concept of (extended) producer responsibility and its fitness for purpose for the future, since these realities differ vastly from those at the moment of setting up this principle.

Orgalime, the European Engineering Industries Association, speaks for 38 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 2012 accounted for some €1,840 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.

www.orgalime.org

1. Resource efficiency: an economic reality and necessity in our business

The industry that Orgalime represents provides the technical capabilities for addressing many of today's societal challenges, including resource efficiency and circular economy issues. Given the opportunities afforded by these issues, environmental issues are important business issues, representing one of the competitive factors of companies. Under its Industrial Policy agenda, the EU has confirmed the need of a strong manufacturing base and its wish to mainstream all policies towards the competitiveness of industry. This therefore should also be the starting point for Europe when developing the EU's resource efficiency policy; it should be coupled with a strong focus on pursuing international negotiations to support the EU's efforts and regulatory activities, so as to ensure that this policy generates real opportunities for Europe's manufacturing sector.

Orgalime industries support the EU's general resource efficiency policy objectives and we consider striving for a circular economy as an important way to increase resource efficiency. As a sector, we already contribute significantly to its implementation: we provide the technologies needed for a resource efficient society in Europe and worldwide, and we are committed to continuously improving own production processes and products, also through the implementation of the various requirements set by the WEEE, RoHS, Ecodesign, Ecolabel and Energy Labelling Directives or the REACH Regulation.

Many legally binding targets already translate the Resource Efficiency Roadmap in our sector, such as the targets for separate collection, recycling, recovery and treatment of WEEE, or the binding energy efficiency requirements for some 46 product groups under the existing Ecodesign Directive, or the restriction of the use of certain hazardous substances in electrical and electronic equipment through the RoHS Directive and/or REACH Regulation, or the Fluorinated Greenhouse Gas- Regulation.

Technology companies operate and source on global markets; as such, our members are part of complex global value chains including raw materials and components. Given practical constraints and realities, Europe can undoubtedly not become self-sufficient in raw materials; however, under the flagship of its resource efficiency policy it has the chance to strive for:

- Policy instruments that promote long-term profitable investments in Europe and business opportunities for European manufacturing industries, including life cycle costing
- Policies and regulation that are designed and implemented with a view to strengthen European competitiveness
- Promoting its objectives internationally through improved dialogues and consensus with partner countries at international level and supporting these objectives with international standards
- Developing meaningful and appropriate European resource efficiency indicators.
- Supporting research and innovation with clear framework conditions, better access to finance for companies, promoting innovation partnerships and PPPs and focusing EU research funding (EU Horizon 2020) on key resource efficiency objectives, including sustainable energy or substitution of rare materials
- The setting of waste collection and recycling targets
- Stimulating the secondary materials market, however, without imposing or prescribing recycling technologies: market forces should remain the driver for innovation
- The setting of quality standards for secondary raw materials
- The establishment of harmonised treatment standards for priority waste streams by European standardisation organisations
- Full implementation of the EU waste acquis, an efficient and effective market surveillance and enforcement to stop illegal shipments of (valuable) waste fractions outside Europe; the recently adopted Commission proposal for an amendment of the Waste Shipment Regulation is a positive step in this direction

- More cooperation of enforcement authorities in order to ensure a full implementation of the EU waste policy acquis
- Pursuing a zero-landfill policy without delay
- Placing more emphasis on the consumer for realising resource efficiency objectives
- Supporting the global deployment of resource efficient technologies, considering that 70-85 % of the potential offered by resource efficiency is outside Europe – EU product policy as a tool to solve global challenges is in our view short-sighted and unrealistic, while providing rather limited benefits for Europe
- More acknowledgment of industry's own resource efficiency activities

We also feel that **certain EU policy measures in themselves constitute a barrier to a circular economy**, which need to be removed. For example, we cite the following:

- The missing spare parts provision for electrical and electronic equipment (EEE) new in scope of the RoHS Directive 2011/65/EU (RoHS), which renders such equipment “waste” earlier than necessary.
- 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.
- 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, which hinders the reutilisation of such materials
- The present wording of article 2.2 RoHS, which renders EEE “waste” earlier than necessary.
- The suggested isolated focus on the waste phase of the current UBA RoHS substance restrictions methodology without considering life cycle impacts of future substance restrictions in electrical and electronic equipment (EEE) and possible alternatives (such as on the product's lifetime or energy efficiency performance).
- The hindrances stemming from the definition of “waste”, end of waste criteria and substance policy measures (REACH Regulation).
- The hindrance of refurbishment of electrical and electronic equipment (EEE) following uncertainties surrounding the new rules for shipments of used EEE in the recast WEEE Directive.
- The absence of minimum quality standards for secondary raw materials.
- The weak transposition, market surveillance and enforcement of EU waste policy measures.

We also believe that before endeavouring to set resource efficiency/productivity targets, robust indicators should be developed. On the basis of the current available knowledge and data, setting such targets on a numerical basis (such as indicators' absolute values) would in our view risk driving industry towards relocation outside the EU.

A **proper transposition and implementation of WEEE2** bears in our view a particular potential for contributing to the EU's Resource Efficiency policy. In particular, implementing the “**all WEEE flows**” concept¹ will be decisive if the WEEE2 Directive's potentials is to be practically exploited. This would in particular require an adequate transposition of articles 7.2 and 16.4 for Member States to demonstrate the achievement of the minimum collection rate. Our position paper on “Main Principles for WEEE Transposition”² spells out our specific recommendations in this respect.

¹ In France, producers are in favor of incitating users to return WEEE to their compliance schemes except for some B2B products when producers and users have concluded other direct agreements.

² Orgalime Position Paper on “Core messages for WEEE transposition” of 18 April 2013 available at: http://www.orgalime.org/sites/default/files/position-papers/PP_WEEE_Core_Messages_for_Transposition_April13.pdf

Any additional focus on directives, such as the Ecodesign Directive and RoHS, however, need to be assessed carefully. We particularly challenge that regulating resource efficiency parameters under the Ecodesign Directive would qualify against the criteria of this Directive.

Such requirements should in particular have significant potential for environmental improvement without entailing excessive costs. In particular if energy related products turned out not to offer the most substantial resource efficiency savings potentials, it might be worth re-considering whether further policy measures, especially under the Ecodesign Directive, are indeed the right policy focus.

2. Review of EU Waste Management Targets

2.1 A successful EU waste legislation requires proper transpositions, market surveillance and enforcement at Member States level, with the European Commission's support to preserve the integrity of its waste policy acquis

Often, finally adopted EU Directives are not properly transposed and/or enforced at Member States level. We encourage the European Commission to make efforts to ensure that proper transpositions should be the norm and that market surveillance activities of its EU waste policy acquis should become a reality.

2.2 Consistency of the review of EU waste management targets and Directive 2012/19/EU on Waste Electrical and Electronic Equipment ("WEEE2")

While the current debate on waste management targets does not directly focus on WEEE, several links occur, which we ask to take into account for the purpose of an efficient and smooth implementation of the recently recast WEEE2 Directive and the overall consistency of EU waste policy. This is particularly relevant for the following aspects:

- Setting **waste prevention targets** (for specific waste streams/materials/products) requires a sensible and realistic approach.
We support that the recast WEEE Directive does not include such targets, which we support, as the enforceability, practicability and environmental relevance of such targets had been a cause for concern.
- Setting **separate reuse targets for preparation for reuse** on specific waste streams/materials/products does not represent a valid option for electrical and electronic equipment.
For WEEE, regulators have explicitly decided against such separate targets during the recent recast. Instead, preparation-for-reuse targets are included in the overall WEEE recovery/recycling targets, which we support³.
- The option of setting **material specific recycling and reuse targets** for metal, plastics, glass (and paper), as laid down in article 11 of the Waste Directive (in parallel to the waste stream specific WEEE targets), risks overlaps with the WEEE Directive. Should this option be put in place for materials that are also present in EEE, inconsistencies of calculations and accountability for the purpose of WEEE need to be avoided.
- Our specific comments on "preparation of EEE for reuse" are elaborated in the annex of this paper.

2.3 Any new (Extended) Producer Responsibility scheme (EPR) must not interfere with WEEE and must seek to build on today's market realities

³ Orgalime Position Paper on "Core messages for WEEE transposition" of 18 April 2013 available at: http://www.orgalime.org/sites/default/files/position-papers/PP_WEEE_Core_Messages_for_Transposition_April13.pdf

Orgalime is fully committed to implement the producer responsibility principle of the WEEE Directive and all requirements derived from it and does in no way challenge them. However, when debating the concept of (extended) producer responsibility and wishing to shape it efficiently for the future, we believe that the change of market realities of the recent years, where specific waste-streams have become or are becoming valuable, needs to be seriously taken into account.

For the case of WEEE, there is evidence that the role and influence of producers of EEE on WEEE management is ever more limited, because relevant parts of the stream of WEEE do not end up in compliance schemes managed by manufacturers. Significant amounts of WEEE flows are outside the official waste management streams and thus outside the influence sphere of producers. Today, there are many 'official' and 'unofficial' commercial collectors, which are handling WEEE from scrap dealers, to retailers, municipalities or other. Producers cannot control these commercial collectors and do not have enforcement powers to force WEEE into or provide evidence of WEEE collection and recycling in producer managed schemes. Member States are the only ones in control of the key instruments to require data on all WEEE flows to be reported.

Therefore, a concept that has been appropriate at a time when waste was considered of no value may therefore require careful reassessment in terms of fitness for purpose in the light of these new market realities, where valuable waste fractions do not end up in official waste streams.

Forcing producers to buy back waste exposes the industry to uncontrollable, unfair commercial practices and negative competitiveness impacts, and therefore cannot be an alternative option for the future.

A mandatory give back of WEEE from collection sites to producers (as art 5.4 WEEE suggests) is a valuable tool to foster producer responsibility. It is however not a tool to provide an entire solution either, and is certainly not a substitute for collecting data on all WEEE flows.

If a mandatory give back is not properly enforced, significant volumes of WEEE will continue to be passed to commercial collectors by collection sites, retailers, business end users or direct from households. A mandatory give back would be ineffective for WEEE collected from the doorstep by other independent collectors. This makes it impossible for producers to secure sufficient WEEE to meet collection targets. The only practical solution is to measure all WEEE reaching proper recycling.

2.4 Orgalime supports a zero landfill policy and the setting of tightened landfill targets.

While supportive to a zero landfill policy, we highlight the need for a proper application of the EU waste hierarchy, especially concerning the differentiation between recycling and energy recovery.

2.5 We are also open to the setting of increased recycling rates for packaging as long as these do not interfere with the internal market and EU waste policy, including WEEE.

Only recently, France has initiated a national measure regarding French sorting instructions for the separation of packaging and packaging waste, which in our view conflicts with EU waste policy, the ability of other Member States to achieve their packaging waste objectives, and the functioning of the internal market. We encourage the Commission to properly defend the internal market and its EU waste policy directives.

2.6 Comments on a further waste policy related improvement suggestions

The suggestion to improve the consistency of definitions used in the legislation for the purposes of monitoring, improved data collection, systematic reliability and validity checks of reported data seems a positive step. However, we stress that given the different characteristics

of different waste streams, certain definitions may have to differ in the different waste stream specific directives in order to allow for an effective implementation of each.

There is also the suggestion “to limit incineration of waste, which might otherwise be recycled (including the setting and defining of a maximum level of incineration)”. We believe that the waste hierarchy has established the guiding principle of recycling to be preferred over incineration. Sufficient flexibility, however, needs to be maintained to implement this hierarchy in a way that makes sense from an environmental and economic perspective. The EU waste hierarchy, and in particular, the differentiation between recycling and energy recovery, remain an unsolved issue.

The proposal to “develop guidance on the proper implementation of the waste hierarchy may be helpful; however, this quickly faces constraints due to the subsidiarity principle and fact that waste management remains a core competence of Member States. Orgalime stresses the need for a sufficiently flexible application of the waste hierarchy.

ANNEX: “Reuse of EEE” and “Preparation of WEEE for reuse”

In the debate on reuse, Orgalime regularly notes misunderstandings between the scenarios of “reuse of electrical and electronic equipment (EEE)” and of “preparing waste electrical and electronic equipment (WEEE) for reuse”.

REUSE⁴ occurs before appliances become waste.

‘Reuse’ is carried out by the consumer market through passing on products to family and friends, through classified ads, E-Bay and other such mechanisms. In the business to business area, this is mainly happening through direct reuse, repair, refurbishment, upgrade and remanufacturing activities (asset recovery). All this occurs before the end-user discards the product, thus before waste is generated.

Such reuse activities are however different from „PREPARATION FOR REUSE“, which represent a waste treatment operation, requiring a specific authorisation of the entity undertaking the activity of preparing for reuse, according to the EU Waste Directive. Re-used EEE is neither in the scope of the WEEE Directive nor can it be measured and contribute to the WEEE Directive’s waste management targets.

Preparing for re-use occurs after items become WEEE

According to the Waste Framework Directive, article 3.16: “preparing for re-use” means “*checking, cleaning or repairing recovery operations, by which products or components of products **that have become waste** are prepared so that they can be re-used without any other pre-processing*”. Notwithstanding the social and environmental benefits related to the preparation of reuse of waste EEE (WEEE), industry recommends that a number of aspects have to be guaranteed whenever preparation for reuse is done to secure products and consumer safety, promote the overall environmental performance, including energy efficiency and restriction of the use of certain substances.

Discarded EEE at collection facilities are waste

EEE discarded by users and deposited at collection facilities, whether households or other than households are waste and have to be dealt with as prescribed by the EU Waste Directive and its national transpositions. Re-use centers which would be allowed to access collection facilities have to be authorised to collect, transport, stock and treat waste (preparation for reuse).

⁴ According to the Waste Framework Directive, “reuse” is about “*operations by which products or components that are not waste are used again for the same purpose for which they were conceived*”; the European Commission’s proposal is addressing “preparation for reuse” in Article 11 (recovery targets).

When waste ceases to be waste

Once an EEE becomes waste, it cannot be easily prepared for re-use and brought back into the status of a product. According to article 6.1 of the EU Waste Directive, waste can cease to be waste after preparation for reuse only when it meets a set of specific criteria, to be defined by the EU, and, as long as it meets all the applicable legislations and standards at the time the EEE is made available for the first on the market after the preparation for reuse.

Therefore, **the "EEE which has been prepared for reuse" has to be considered a new product and the entity undertaking such an operation has to be regarded as the manufacturer** with the responsibility of undertaking the conformity assessment procedure (for example under the Low voltage, machinery, EMC, RoHS, Ecodesign, Energy Labelling, etc.), affixing the CE marking and preparing the Declaration of Conformity and the technical file where required. He is also responsible of labelling the product with his own name removing the brand of the original manufacturer if the latter required by applicable legislation, such as WEEE, RoHS, Ecodesign or Energy Labelling.

Preparing for reuse does not mean "cannibalising" WEEE

Article 6.2 WEEE states that "In order to maximise preparing for re-use, Member States shall promote that, prior to any further transfer, collection schemes or facilities provide, where appropriate, for the separation at the collection points of WEEE that is to be prepared for re-use from other separately collected WEEE, in particular by granting access for personnel from re-use centres."

It is important that authorisation to access collection facilities is given by Member States preferably to entities able to ensure the preparation for reuse of whole equipment rather than focusing on activities of cannibalisation of valuable parts and materials of WEEE. In the second case, the management of the leftovers (waste) has to be financed and taken care by the entity and reported as a WEEE flow. The leftovers cannot be returned to the WEEE collection facility as they would qualify as waste generated by an industrial/commercial activity. As such the responsibility of financing and managing is upon the waste producer. Nonetheless the waste flow has to be reported as a WEEE flow and should concur to the collection target calculation together with the flow of prepared-for-reuse part.

The proposal to handover WEEE deposited at collection facilities to designated establishments or undertakings for the purpose of preparing for reuse, misses one important point that should be considered. **There should be an obligation for organisations dealing with preparation-for-reuse to return all the material that was not prepared for reuse to the appropriate collection/treatment facilities, to avoid WEEE flows being diverted and not reported.**

In conclusion:

- Orgalime supports the WEEE Directive's approach of including preparation-for-re-use targets of whole appliances in the recycling targets of article 11.
- There should be specific obligations and specifications for entities performing preparation for reuse of WEEE. To increase the credibility and to safeguard consumer safety entities preparing WEEE for reuse need to be qualified/authorised according to the EU Waste Directive for performing operations on waste (transport, handling, storage, treatment etc.) and they need to be regarded as manufacturers concerning all the obligations related to applicable Directives and standards.
- The development of harmonised standards via European Standardisation Organisations, which includes preparation for reuse (see article 8.5) should be supported.
- According to article 6.4 WEEE, Member States should allow access for authorised organisations to collection facilities to pick waste product for their waste reuse activity. However, such organisations need to work along the same rules as other actors, and are required to manage the waste resulting from their activities according to the national waste legislation (no longer WEEE) but the waste flow has to be reported as a WEEE flow.