

Brussels, 12 January 2011

Scope is the Anchor for any Legislation – Do not Waste the Chance for a Better WEEE Directive

Orgalime's fundamental request to regulators is to ensure an EU legislation that is workable and enforceable in practice by supporting the following main proposals:

- Stick with a clearly defined scope of ten categories of WEEE covered by the Directive – the consequences of the proposal for an open scope have not been subject of an impact assessment. We would like to remind regulators that the basic aim of the directive is to deal with the growing household waste stream.
- Introduce a distinct but comprehensive set of scope exclusions, including: military equipment; equipment which is part of another type of equipment not within the scope of WEEE; fixed installations; large scale industrial tools; non road mobile machinery; any means of transport; photovoltaic modules; fixed parts of a building; filament light bulbs and implanted and infected medical devices.
- Reject any illustrative list of product examples covered by the Directive, since such a list can never be complete or follow technological developments in a timely manner.
- As this Directive is under Article 192 of the Treaty on the Functioning of the EU, it is all the more important that the scope should be clearly defined within boundaries so as to not radically increase the uncertainty which is already, today, faced by producers under the existing Directive. The clarification of the scope was one of the essential motivations for the review.

- **Concerns on the proposal to define the scope of the WEEE Directive**

We understand that the Council is currently discussing a new proposal to define the scope of the WEEE directive along the following lines:

“Categories of electrical and electronic equipment covered by this Directive:

1. *Temperature exchange equipment [...] 4*
2. *Screens and monitors*
3. *Lamps*
4. *Large equipment [...], including:*

Orgalime, the European Engineering Industries Association, speaks for 32 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 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.

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household appliances; IT and telecommunication equipment; consumer equipment, luminaries, equipment reproducing sound or images, musical equipment; electrical and electronic tools; toys, leisure and sports equipment; medical devices; monitoring and control instruments and automatic dispensers. This category does not include equipment included in categories 1 to 3.

5. Small equipment [...], including:

household appliances; IT and telecommunication equipment; consumer equipment; luminaries, equipment reproducing sound or images, musical equipment; electrical and electronic tool; toys, leisure and sports equipment; medical devices, monitoring and control instruments and automatic dispensers. This category does not include equipment included in categories 1 to 3."

Whereas:

"large equipment" means equipment where the sum (height + length + depth) > 100 cm;

"small equipment" means equipment where the sum (height + length + depth) < 100 cm".

Orgalime's analysis:

- Whereas the existing WEEE scope is based on ten categories which describe different technologies of products,
- The new proposal for the WEEE recast describes five categories: Three of them would still describe different technologies of products, the additional two categories, namely categories 4 and 5, however, would twist the logic and have a different approach: They would delineate an "open" scope by using the word "including" and the terms "large and "small" while "only" listing a number of technologies of products.

In more detail:

Categories 4 and 5 have exactly the same wording, differing only by description "large" (category 4) and "small" (category 5) according to the size of the equipment below or above 100 cm.

While the difference between "large" and "small" equipment can be relevant for the recovery targets (cf. Article 11), the definition for "large" and "small" is in our view irrelevant for the scope.

As "small" is defined as a size between zero and a specific borderline and "large" is defined as a size between the specific borderline and anything above, the sum of "small" and "large" will always include all such equipment as the scope is always the sum of specific subgroups. Categories 4 and 5 would consequently sum up to:

"[Any] equipment [...], including: household appliances; IT and telecommunication equipment; consumer equipment, luminaries, equipment reproducing sound or images, musical equipment; electrical and electronic tools; toys, leisure and sports equipment; medical devices; monitoring and control instruments and automatic dispensers. This category does not include equipment included in categories 1 to 3."

In conclusion, categories 4 and 5 lead to the same result as the earlier proposal for the "open" scope. Any discussion about the borderline between category 4 and category 5, irrespective whether this borderline is defined by "cm", "kg" or anything else, does in practice not differ from earlier proposals for an open scope and can in our view not overcome the uncertainties and problems related to such an "open scope".

We ask regulators to abandon this proposed way forward.

- **Concerns on the open scope**

The consequences of the proposal for an open scope remain unknown today. Carrying out an impact assessment before taking a decision is not only a prerequisite in terms of Better Regulation, it will help to close knowledge gaps and avoid undesired negative consequences, such as on SMEs, while identifying areas where real environmental gains can be achieved.

We are concerned with the proposal to reduce the product categories listed in annex I from ten to five or six. When defining the scope, it is primarily relevant to look at the “placing on the market” of the new appliance to ensure that each producer fulfils the requirements for his products at this very moment and that thereby a level playing field and fair competition is secured. How end-of-pipe collection may be organised in practice at a much later stage is of secondary relevance, including because products change quickly and what appears an appropriate number/structure of containers today may not be appropriate tomorrow. Therefore: for measuring recycling/recovery targets a structure of 5-6 categories may be appropriate. However, for determining the scope of the Directive they are not.

In addition, some claim that collection at collection facilities would happen in practice via containers for these 5-6 categories. However, the number of containers is not identical in all collection facilities nor in all Member States.

Orgalime therefore advocates for maintaining the existing ten categories listed in Annex I of the WEEE Directive.

- **Concrete industry proposals for shaping the WEEE scope**

With a view to achieve a quality legislation, which is coherent, enforceable and workable in practice, Orgalime would request your active support for the following proposals:

- Article 2.1 should read as follows: “This Directive shall apply to electrical and electronic equipment falling under the categories set out in Annex I.A of this Directive and to the WEEE generated by such equipment.”
- The annex I.A of the existing WEEE Directive should be maintained
- Article 2.3 should include at least the following scope exclusions:
 - equipment which is part of another type of equipment outside the scope
 - fixed installations
 - large scale stationary industrial tools
 - mobile machinery
 - any means of transport
 - fixed parts of a building
 - filament light bulbs
 - implanted and infected medical device
- In line with the Commission’s F.A.Q.s guidance document, the term “dependent” shall be defined as follows in article 2: “*Dependent means that the equipment needs electricity as its primary energy to fulfil its basic function*”.