

**Brussels, 12 June 2015**

## **WEEE2: Draft Implementing Regulation establishing a Common Methodology for the Calculation of “the weight of EEE placed on the national market in each Member State” and a Common Methodology for the Calculation of the “Quantity of WEEE Generated by Weight in each Member State”**

According to Article 7(1) of the Directive 2012/19/EU on Waste Electrical and Electronic Equipment (further on “WEEE2”), Member States will have two options for demonstrating compliance with the new minimum collection rate from 2019 onwards. They can either collect “65% of the average weight of EEE Placed on the Market (further on “POM”) in the three preceding years in the Member State concerned”, or collect “85% of WEEE generated on the territory of that Member State”.

Article 7(5) WEEE2 tasks the Commission with establishing common methodologies for both, the calculation of the “weight of EEE POM” and of the “quantity of WEEE generated in each Member State” by 14 August 2015.

The United Nations University (UNU) assisted the Commission in developing these methodologies. They also created the UNU-keys, which can be used to harmonise the domestic production, import and export statistics needed for the POM calculation across Member States.

Orgalime fully supports the efforts of the European Commission to establish such common methodologies. On the one hand, these methodologies are crucial to ensure a clear and harmonised implementation of the collection target in each Member State. On the other hand, it is essential that the methodologies lead to fair targets, which are based on objective, clear and transparent criteria. Member States are of course free to choose, which of the two approaches they use to demonstrate the achievement of the collection rate from 2019 onwards.

Following the Commission’s stakeholder meeting on 20 May 2015, we welcome the opportunity to provide our comments on the Draft Implementing Regulation (Draft Regulation), which has been circulated to this end. Our comments refer to three parts: First, we outline our reasons for supporting the WEEE generated approach and highlight the importance of the all actors<sup>1</sup> concept. Second, we provide three improvement suggestions for the proposed methodologies. Third, we raise three issues, which we find require further clarification.

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<sup>1</sup> « WEEE actor » means any natural or legal person that collects, treats, purchases and/or sells WEEE.

*Orgalime, the European Engineering Industries Association, speaks for 43 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.3 million people in the EU and in 2014 accounted for more than €1,825 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.*

## 1. ORGALIME SUPPORTS THE WEEE GENERATED APPROACH

Orgalime welcomes the fact that Member States will be able to demonstrate compliance with the minimum WEEE collection rate either by using POM or WEEE generated methodology from 2019 onwards. Regardless of the method used, we find it important that all WEEE flows are counted. Indeed, Article 16(4) of WEEE2 stipulates that National Authorities must ensure that collection rates are achieved taking into account all the channels. Counting all WEEE, which is collected and properly recycled independently of its route, is crucial to achieving the WEEE2 collection rate, considering that given today's value of most WEEE there are massive flows of WEEE outside the producer driven WEEE systems. Such other streams are not accounted for today. This underlines the importance that the responsibility for achieving the collection target stays with the Member State, who has the necessary enforcement power. It follows that producers cannot be held liable for meeting the collection targets, as they do not possess the enforcement powers required to do so.

This also underlines that the "WEEE generated" approach will make important progress towards reflecting the new market realities in the management of WEEE stemming from its economic value today. It will by nature deepen the knowledge base and accuracy of EU waste statistics on all the actors dealing with WEEE and thereby strengthen the environmental objectives of the Directive.

Notwithstanding individual Member State's choice between the two approaches, the WEEE generated approach has several additional advantages, such as:

- **A WEEE generated target will fit all Member States**, since it is based on the real amounts of WEEE based on POM data with additional lifespan calculations. This should allow for differences between Member States concerning history of waste generation, economic developments, technology advancement, consumer behaviour and product cycles to be taken into account.
- **Due to the lifespan calculation of products, WEEE generated is therefore also a more complete and thorough method than POM.** In our view, having one minimum collection rate target based on POM for all Member States has its own set of drawbacks. This is evidenced by the need that occurred to grant derogations to certain Member States in Art. 7(3) WEEE2 Directive, which might otherwise not be able to achieve the collection target based on POM, due to large increases of EEE sales and the extended life time of certain products.
- **The WEEE generated approach is the best way to accommodate new products included in the WEEE2 scope.** A case in point are photovoltaic panels, which came into scope on 14 February 2014. These are heavy products with a long lifespan of 10-15 years. Using the POM calculation method risks creating a mismatch between the EEE placed on the market, and amounts of WEEE which can actually be collected.

We reiterate our suggestion to using the information that Member States have obtained following their obligations arising from other EU waste legislation, such as:

- Regulation 2150/2002 on Waste Statistics,
- Directive 2008/98/EC on Waste or
- Regulation 1013/2006 on Waste Shipment.

The data derived from these pieces of EU legislation provide a useful basis for the calculation of WEEE generated.

## 2. COMMENTS ON THE DRAFT IMPLEMENTING REGULATION

The apparent consumption and the sales-lifespan methodologies proposed by the Commission<sup>2</sup> are in our view clear, simple and well-structured. Nevertheless, we would like to raise the following three suggestions for improving the Draft Regulation:

- **Availability of the electronic tool and improving its transparency**

First and foremost, we ask for transparency and inclusion of the industry regarding the calculation of the WEEE generated and POM figures. The electronic tool developed by the United Nations University for the purpose of calculating the methodologies in Annex I and II should be made available to stakeholders, such as producers and WEEE schemes. Also, the POM data and lifespan data for each category per Member State should be made available. This would ensure transparency, and allow relevant stakeholders to verify the correctness of the data used.

- **Adjusting the data used in Article 3 and Article 4 of the Draft Regulation**

Concerning Article 3, the POM target should be based on the national registry data, as this is usually of high quality. If producers' data were incomplete or inaccurate, Member States should indeed improve the data following the calculation set out in Annex I. However, we would like to suggest that any update of the data should be based on sound available data and include the expertise of relevant industry stakeholders, followed by informing the Commission.

Likewise, regarding Article 4, we believe that the Member State's prerogative to "...*adjust lifespan data that the electronic tool uses for the calculation of WEEE generated*..." should be subject to certain conditions. Any update of the data should equally be based on sound available data and include the expertise of relevant industry stakeholders. Otherwise, there is a risk that adjustments result in a detrimental effect on the market.

- **The need for a better consideration of business-to-business products to guarantee quality results**

We believe that the methodologies proposed in Annex I and II and the UNU-keys have a strong focus on domestic equipment. We fear that the complexity and heterogeneity of professional products have not been taken into account and that the margins of error would therefore be much higher than for domestic products. In fact, the Commission estimates a margin of error of between 5% and 19% across Member States when forecasting POM information<sup>3</sup>. This needs to be taken into account when calculating the collection target. Indeed, it exemplifies the fact that producers alone cannot be held responsible for reaching collection targets subject to such high margins of error.

## 3. POINTS FOR CLARIFICATION

We would like to raise the following three issues for clarification:

- **The legal reference for "weight of EEE placed on the market" is unclear**

Article 3 of the Draft Regulation pertaining to the *methodology for the calculation of the weight of EEE placed on the market in each Member State* in our view requires clarification in the following respect:

<sup>2</sup> Annex I and II Draft Regulation, respectively

<sup>3</sup> Commission « Background information Document », page 3

According to Article 3.1, “the weight of EEE placed on the national market of each Member State is calculated on the basis of the relevant information provided by all EEE producers pursuant to Article 16(2)(c) and Annex X of Directive 2012/19/EU”. This, to our understanding, means that the EEE POM calculation will be done on the basis of the data supplied by producers to the national register.

Article 3.2, however, makes reference to the harmonised methodology for calculating EEE POM in Annex I of the Draft Regulation.

Therefore, it remains unclear whether the legal reference for calculating the POM based collection target is indeed Art 3.1 or Article 3.2 of the Draft Regulation. As mentioned previously, the POM target should in our view be based on the national registry data, as this is usually of high quality.

- **The uncertainty whether products exported count towards the WEEE generated target or not**

Products exported for refurbishment or re-use should not be considered as WEEE generated in a given Member State. Indeed, these products are not necessarily discarded within the territory of the state. This should be explicitly mentioned.

- **Relation between the UNU-keys and the WEEE2 scope**

Finally, we would like to ask you to clarify that the UNU keys should not include products that are not in the scope of WEEE2 to avoid misleading results. We recommend to strive for an as harmonised as possible understanding of the scope of the Directive for this and other critical implementation issues. The interpretation of the scope of the Directive remains a prerogative of the European Court of Justice.

**In conclusion:**

Orgalime thanks the Commission for its efforts to develop common methodologies both for the calculation EEE POM and WEEE generated collection targets. These methodologies are crucial to ensure a clear and harmonised implementation of the collection target in each Member State, especially considering the changes introduced by the WEEE2 Directive from 2016 and 2019 onwards.

We, however, ask for improved transparency of the electronic tool and more involvement of industry stakeholders, which we consider crucial for ensuring that the methodologies create fair and accurate calculations of the collection targets. Industry stakeholders should also be involved whenever a Member State defines or changes the underlying data to calculate EEE POM and/or WEEE generated figures according to Article 3 and Article 4 of the Draft Regulation. Despite the very thorough methodology developed by UNU, we believe that the UNU-keys have a strong focus on domestic appliances, however still need to place more emphasis on business-to-business realities. We criticise that the complexities of professional products have not been adequately addressed today.

Finally, we seek clarifications concerning the legal reference for calculating the weight of EEE POM, products exported for refurbishment or re-use (that should not be considered as WEEE generated in a given Member State) and regarding the relation between the UNU-keys and the WEEE2 scope.

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