



ORGALIME POSITION PAPER on WEEE REVIEW POLICY OPTIONS

Brussels, 4 June 2008

Orgalime thanks the Commission for consulting stakeholders on a set of policy options currently under consideration for the review of directive 2002/96/EC on Waste Electrical and Electronic Equipment and herewith provides its contribution to the debate.

Orgalime comments are structured according to the headings and sequence of options given in DG Environment's consultation paper. We provide comments on each of these proposed options and complement them, where we consider necessary, with proposals for alternative and/or additional options. We also include general remarks and provide underlying evidence, in so far as this exists today.

In general, we note that the operational status of WEEE systems in the various EU member states still differs significantly and that experience or feedback on practical operations, while improving, still remain limited in most of the countries. Also, reporting requirements and calculation methods of certain reporting parameters at national level differ from member state to member state. We therefore doubt that the present status of information and data availability would allow a representative compilation of data that can necessarily be extrapolated as such across EU member states as a whole. These facts should in our view be taken into account in analysing any implementation report issued by individual member states and drawing conclusions for the further WEEE review process.

OPTION	ORGALIME comment
ISSUE 1.A : COLLECTION TARGETS	
General comments	<ul style="list-style-type: none">• The current “one size fits all” approach of the given 4kg/year/ person collection target is implemented differently in member states. It would in our view be premature to propose a stricter horizontal target applying on all categories in all member states prior to all member states reaching the current target.• In practice, there is a considerable gap between the reported collection figures which must meet collection targets and reality: in particular, waste EEE with a high metal content is constantly increasing in value, given the current high level of raw materials prices. Such waste often does not end up in reported waste streams, although it does go through “state of the art” collection and recycling processes. Today's collection reported figures therefore do not

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	<p>properly reflect what is properly collected and recycled in reality. The option of only increasing the current collection target would not close this gap.</p> <ul style="list-style-type: none"> We believe that any target should not be of quantitative nature, but it is necessary to evaluate what service collection would indeed provide for the purpose of waste treatment.
Fixed mandatory collection target	<p>Under the given options of the consultation document, Orgalime's preferred option is the combination of the following two elements:</p> <ul style="list-style-type: none"> Orgalime supports the setting of a fixed mandatory collection target differentiated by (clusters of) members state expressed in weight per inhabitant per year based on the economic situation of the (cluster of) member state(s). Such clusters should be significantly broad to secure a level playing field. This option should in our view be combined with increasing reporting parameters for all actors other than manufacturers of EEE so as to ensure the maximisation and a realistic assessment of reported quantities.
Variable mandatory collection target	<p>We consider this a prudent proposal, however, it appears to be too complicated to us to be put into practice and enforced. It would especially depend on further market parameters and not exclusively on the parameter of "weight put on the market" to work in practice.</p> <ul style="list-style-type: none"> Weight put on the market would have to be considered over a long period to take into account the considered products' lifetime Each country's progressive deployment and improvement of collection schemes would have to be taken into account. For professional equipment, waste owners can decide to manage waste on their own according to the material recycling value context. Quantities collected by waste owners are not tracked today. <p>In particular, waste EEE with a high metal content is constantly increasing in value given the current high level of raw materials prices. Such waste often does not end up in reported waste streams.</p>
Environmental weight based collection target	<p>We consider this a prudent proposal, however, it appears unenforceable and too complicated to us to be put into practice.</p> <p>In particular, waste EEE with a high metal content is constantly increasing in value given the current high level of raw materials prices. Such waste often does not end up in official waste streams.</p>
Obligatory give-back by collection points	<p>We consider this a question of enforcement rather than a shortcoming of the directive, which already aims at collected WEEE to be returned for treatment to compliance schemes in line with the directive.</p>
ORGALIME PROPOSALS FOR OTHER OPTIONS:	
<ul style="list-style-type: none"> Deletion of collection target from directive 	<p>Producers collection systems have limited ability to meet a given collection target since wastes are frequently diverted to other non reported flows driven by recycling or reuse business interests.</p>
<p>EVIDENCE:</p> <ul style="list-style-type: none"> Witteveen+Bos, Onderzoek naar complementaire afvalstromen voor e-waste in Nederland, 10 April 2008 (common research report from Dutch WEEE recycling systems) UNU-EHS study (e.g.: chapter 10.2.1, p.250) 	

ISSUE 1.B: TARGETS FOR RECOVERY, COMPONENT MATERIAL AND SUBSTANCE REUSE AND RECYCLING

<p>General comments</p>	<ul style="list-style-type: none"> • For practical reasons, i.e.: that WEEE is collected together, we consider targets per category as too complex. • For the time being, there is no scientific evidence to suggest the need for higher targets. • The current collection and therefore recycling figures, which are reported, do not properly reflect reality, as many non-reported waste flows exist. Targets for recovery / recycling / reuse only address and cover the schemes under producers' control where reporting is mandatory. • Any future system should not increase the administrative burden on producers. • Orgalime particularly opposes double costs that would result from the establishment of waste stream specific and material specific targets in parallel to each other. • Orgalime supports the overall environmental aims of future waste management, i.e. minimising environmental impacts and optimising resources efficiency, at the lowest cost. At the same time Orgalime sees a necessity to allow for flexibility regarding waste management activities in the market. An overall efficient waste management has to optimally align case-by-case qualities and amounts of distinct waste streams, available technologies for treatment, recycling and recovery and not least markets for products derived from such activities. Flexibility is all the more important because different pre-conditions (technological, economic, regulatory) are found in different EU member states. In order not to lose track regarding the overall environmental targets, a conceptual approach, of developing a "divert-from-landfill" policy of highly calorific waste should be developed.
<p>Increase the current target, for all or some categories</p>	<p>Orgalime does not support this option. The present targets should be maintained. Most of the member states are still in an early phase of implementation. Increasing the recycling targets will not solve the problem of developing recycling processes for the complex material mix of collected products, which will still take require time and a steady flow of collected waste equipment to be optimised.</p>
<p>Introduce a target for category 8 equipment (medical devices)</p>	<p>Orgalime does not support this option. Waste B2B medical devices are taken care of between professional business partners. In the case of B2C, the quantities of collected waste medical devices and related environmental aspects are less relevant.</p>
<p>Material based targets for all WEEE or per product category</p>	<ul style="list-style-type: none"> • Orgalime does not support establishing material based AND appliance based targets in parallel to each other. Material based targets <u>per product category</u>, however, would represent the worst option, since this would introduce parallel waste treatment routes and double administrative burden and costs, especially for reporting. • If material based targets were to be used, these must be based on a broader perspective, i.e.: the Waste Framework Directive in order to deliver results and to work in practice.
<p>Stimulation of outlet market for recycled and recovered products, esp. high level of material re-application</p>	<p>We acknowledge the relevance of this aspect with regard to the development of a EU market for secondary raw materials production in Europe, however, this issue cannot be solved within WEEE Directive.</p>
<p>ORGALIME PROPOSALS FOR OTHER OPTIONS:</p> <ul style="list-style-type: none"> • We believe that a "divert from landfill" policy for 	<p>With a view to optimising efficiency of resources, we believe this is an alternative way forward in the long term.</p>

highly calorific waste should be developed.	
<p>EVIDENCE:</p> <ul style="list-style-type: none"> • UNU-EHS final study report (e.g.: chapter 7.5, p.99) 	
<p>ISSUE 1.C: TARGETS FOR REUSE OF WHOLE APPLIANCES</p>	
<p>General comments</p>	<ul style="list-style-type: none"> • Reuse in reality can only take place BEFORE equipment enters any collection point. To be realistic, only few products that enter the waste stream are fit for refurbishment or re-use. They are in principle worn-out when entering the collection point: they should be treated as waste and the materials should be recycled. If a product is still performing properly, including on environmental aspects from a life cycle perspective and in comparison to state of art technology, it can and should be sold on the second hand market due to its value before it enters the collection point. • Notwithstanding the social benefits related to the re-use of products (before they become waste), our members believe that theory and reality differ vastly. Orgalime's main concern is that 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 also set by regulators. For many EE appliances today the overriding environmental impact from a life cycle perspective arises from energy consumption during the use phase of the product. It may therefore, 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 from the old appliance by proper waste management, instead of simply re-using the same old appliance. It would also reduce costs for the consumer (less energy expenses). <p>Further concerns related to re-use are the following:</p> <ul style="list-style-type: none"> • 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 has had no influence on the refurbishment performed by another company. • The difficulty to draw any lines between first user, second hand products business and reuse after ending up in collection network makes any target setting calculations inaccurate. The user in most cases sells the product for profit if there is any resell/reuse value. <p>For these reasons, Orgalime calls upon regulators to urgently re-think the present priority acknowledged for reuse.</p>

<p>Set a target for reuse of whole appliances to be achieved by a certain date</p>	<p>Orgalime does not support this option (from a life cycle perspective, reuse must not necessarily represent the best environmental option. See also above comments regarding the safety of reused product and liability issue involved or consumer affordability).</p>
<p>Include the reuse of whole appliances in the current or increased components, material and substance reuse and recycling targets</p>	<p>Orgalime would support this option in so far as it relates to the <u>calculation</u> of such targets. Otherwise, Orgalime does not support this option.</p>
<p>Give obligatory access for the reuse sector/organisations to collected WEEE to select that equipment that could meet the criteria for being reused, refurbished or repaired</p>	<p>Orgalime does not support this option. We do not consider this a shortcoming of the directive, which already aims at collected WEEE to be returned for treatment to compliance schemes in line with the directive. Obligatory access to collection network for reuse business is difficult to control and is in contradiction with the fundamental producer responsibility principle of the directive. Unsound trading/business model in used goods/materials for recycling must be avoided.</p>
<p>EVIDENCE:</p> <ul style="list-style-type: none"> • UNU-EHS final study report (e.g.: executive summary, p.xii and chapter 12.1, p. 308; chapter 10.4.4, p. 279; chapter 11.5.1, p. 305, p. 276 ff) • EuP implementation process (preparatory studies): http://www.ecoboiler.org; http://www.ecohotwater.org; http://www.ecocomputer.org; http://www.ecoimaging.org; http://www.ecotelevision.org; http://ecostandby.org; http://www.ecocharger.org; http://eup4light.net; http://www.ecoaircon.eu; http://www.ecomotors.org; http://www.ecofreezerscom.org; http://www.ecocold-domestic.org; http://www.ecowet-domestic.org; http://www.ecosolidfuel.org; http://ecocomplexstb.org; 	
<p>ISSUE 2.1: OPTIONS FOR CLARIFICATION OF THE SCOPE</p>	
<p>Clarifying the scope, by formalising criteria used in Frequently Asked Questions (FAQ) document</p>	<p>Orgalime prefers the option of including the scope criteria listed in the FAQs in the legal body of the WEEE directive, since it would foster fair competition and avoid barriers to trade in the EU by providing legal certainty and a level playing field.</p> <ul style="list-style-type: none"> • The Commission in its Frequently Asked Questions Document provides a number of criteria for determining the scope of WEEE, which Orgalime fully supports in the interest of a full harmonisation of the scope. In particular, we support the additional interpretation provided for article 2.1. WEEE by applying the criterion whether or not a product is part of a “fixed installation”: The notion “fixed installation” is a settled term that is derived from existing Community law, i.e. article 2.c of Directive 2004/108/EC on electromagnetic compatibility, which, we propose, should also apply for WEEE. If fixed installations were considered as falling under the scope of WEEE, as some authorities seem to argue, this would mean that installations in petrochemical, automobile manufacturing, pharmaceutical, material handling,

	<p>power generation, water treatment or paper manufacturing plants would be subject to WEEE. This clearly was not the intention of the WEEE Directive when it was adopted.</p> <p>Article 2.1 refers to all categories listed in annex I.A of the WEEE Directive. The criterion of “<i>another type of equipment</i>” and its additional interpretation guideline of “<i>fixed installations</i>” therefore cannot be limited to a selected number of WEEE categories, but must be horizontally applied as a criterion on its own right. It must therefore be handled completely separately from the exclusion of “large-scale stationary industrial tools” as in category 6 of Annex IA/IB of the WEEE Directive.</p> <ul style="list-style-type: none"> • The additional interpretation of what constitutes a “finished product” is fundamental to distinguish between EEE and components, which by themselves are not in the scope of WEEE. • We do not support including under the WEEE Directive waste equipment from professional users, which by its nature is not used by private consumers, since such waste equipment does not end up in the municipal waste stream. It has long been in the tradition of professional goods manufacturers, when supplying a replacement machine, to deal with discarded equipment. It is therefore important to keep sufficient flexibility to ensure an effective and cost efficient management of B2B waste. • Take-back obligations should not be extended to (additional) professional goods. • Finally, we recommend amending the RoHS Directive giving it an own scope that incorporates the criteria of “fixed installation” and “finished products” directly into the RoHS Directive. • Orgalime is prepared to contribute to the definition of such scope criteria and any process to apply them. <p>This option should be combined with the option of bringing provisions on the scope under the legal base of article 95 of the EC Treaty (see chapter 3.3., option 1, page 12 of the Stakeholder Consultation Document). This would bring a harmonised scope in Europe considering the many product related requirements established by the WEEE Directive.</p>
<p>Clarifying the scope by using a fixed list of products falling under the scope or falling outside the scope (negative list), updated through the Comitology process</p>	<p>Orgalime does not support this option as a standalone solution, as any list could never be complete or up to date and requires, as an indispensable prerequisite, formalised criteria (see above). If such criteria are well defined, establishing a list would be unnecessary. Indicative examples given in guidance can be helpful.</p>
<p>Classifying categories of equipment as being WEEE from private households (B2C) or as being WEEE from users other than private households (B2B)</p>	<p>If done via option 1 of this section (criteria), we could support this option. Otherwise, Orgalime does not support this option.</p> <p>Products designed and marketed for dual use should be assumed to represent consumer products to avoid any misunderstanding.</p>
<p>Define the scope under the RoHS Directive¹² and refer to it in the WEEE Directive</p>	<p>We prefer independent scopes for WEEE and RoHS rather than a link. Orgalime takes the position that RoHS should be merged into the REACH Regulation in the future and can therefore not provide a reliable basis for the scope of WEEE.</p>

<p>ORGALIME PROPOSALS FOR OTHER OPTIONS:</p> <ul style="list-style-type: none"> Harmonisation of scope and definition of “WEEE from private households” by a legal base of art. 95 EC Treaty 	<p>Due to the product related aspects of WEEE (i.e.: financing or marking), the scope should be fully harmonised to avoid fragmentation in the internal market.</p>
<p>EVIDENCE: UNU-EHS final study report (e.g.: executive summary, p.xi; chapter 9.1, page 210; chapter 10.1., p. 219; chapter 10.1., p. 220; chapter 10.1.2, p. 237; chapter 10.1.4, p. 224; chapter 10.1.4, p. 245f)</p>	
<p>ISSUE 2.B: OPTIONS ON THE WIDTH OF THE SCOPE</p>	
<p>General remark</p>	<p>The scope is one essential point that should be tackled under art. 95 EC Treaty (see comments previous section and comments listed under issue 3, first option on this page)</p>
<p>The inclusion of (other) types of products/product categories in the scope</p>	<p>Orgalime does not support this option. Any increase in scope has less environmental impact than a better enforcement of the current scope of the directive.</p>
<p>Maximise the scope to all EEE (also above 1000Volt AC or 1500Volt DC) and to spare parts and components</p>	<ul style="list-style-type: none"> Orgalime does not support maximising the scope to all EEE (also above 1000Volt AC or 1500Volt DC) since such equipment does not represent consumer products that end up in municipal waste streams. Please also see comments given under issue 2.1, pages 5 and 6 on B2B) Maximising the scope to spare parts and components would result in shifting down the total responsibility to the level of single component manufacturers, which we consider impossible to be implemented. Enforcement can only address manufacturers of finished products. We therefore do not support this option.
<p>The exclusion of types of products/product categories from the scope</p>	<ul style="list-style-type: none"> Orgalime prefers the option of excluding pure B2B equipment (see UNU-EHS study report). This option should be combined with the introduction of a definition of “B2B” as follows: B2B means “<i>Electric and electronic equipment for which the producer substantiates that it is exclusively used by users other than private households or that it is usually not used in private households</i>”.
<p>EVIDENCE:</p> <ul style="list-style-type: none"> UNU-EHS final study report (e.g.: executive summary, p.xi; chapter 9.1, page 210; chapter 10.1., p. 219; chapter 10.1., p. 220; chapter 10.1.2, p. 237; chapter 10.1.4, p. 224; chapter 10.1.4, p. 245f) 	

ISSUE 3: OPERATION OF THE PRODUCER RESPONSIBILITY PROVISIONS

<p>Bring the provisions under a different legal basis (...), aligning definitions</p>	<p>This is Orgalime's preferred option. We fully support bringing the provisions related to the scope, definitions, product requirements and producer responsibilities related to the putting on the market of new products under the legal base of article 95 of the Treaty and provisions related to targets and waste treatment under article 175 of the EC Treaty, aligning at the same time definitions according to the recently adopted "New legislative framework" (previously called marketing of Goods Package) and the EMC Directive.</p>
<p>Harmonise the implementation of the allocation of financial responsibility, the frequencies and formats of reporting, the registration and the making information available</p>	<p>We support the harmonisation of implementation on the frequencies and formats of reporting, the registration and making available of information as a basis for the allocation of responsibilities for handling the waste streams.</p> <p><i>Remark: There is no detailed provision on an allocation of financial responsibilities in the WEEE directive, but the WEEE directive specifies the main financial principles of the responsibilities of producers based on an allocation of specific shares of waste. The Directive does not and should not specify in detail the exact operational mechanisms for financial allocation that are used by the various compliance schemes in Europe.</i></p>
<p>Stimulate eco-design through defining targets for reusability, recycling and recoverability of electronic equipment.</p>	<p>We support eco design as currently under implementation under the Eco Design Directive, which also includes aspects of design for recycling. Design related provisions under WEEE are consumed by the Eco Design Directive and therefore no longer necessary in the WEEE directive. Therefore, article 4 WEEE should be removed from the WEEE directive.</p>

EVIDENCE:

- UNU-EHS study (e.g.: pages 233, 276ff, 306, 307 or executive summary page x.i)
- Ökopol study, e.g.: pages XXI, XXX or 185
- Orgalime Guide on the scope of WEEE and RoHS directives, January 2006
- EuP implementation process (preparatory studies): <http://www.ecoboiler.org>; <http://www.ecohotwater.org>; <http://www.ecocomputer.org>; <http://www.ecoimaging.org>; <http://www.ecotelevision.org>; <http://ecostandby.org>; <http://www.ecocharger.org>; <http://eup4light.net>; <http://www.ecoaircon.eu>; <http://www.ecomotors.org>; <http://www.ecofreezerscom.org>; <http://www.ecocold-domestic.org>; <http://www.ecowet-domestic.org>; <http://www.ecosolidfuel.org>; <http://ecocomplexstb.org>;

ISSUE 4: TREATMENT REQUIREMENTS

<p>Introduce the development of treatment standards</p>	<p>We support the development of harmonised standards that aim at the definition of environmental quality standards for recycling processes. This kind of standards should not hamper innovation of treatment and recycling processes. However, we do not support detailed and descriptive requirements on specific tasks of treatment of waste as given in annex II WEEE (e.g.: manual dismantling or removal of certain components/substances).</p>
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	<p>We suggest combining this option with deletion of treatment requirements in the WEEE directive as soon as such standards are adopted.</p>
<p>Include a definition of “remove”</p>	<p>Until the finalisation of standards according to option 1, the definition of the interpretation of “<i>have to be removed</i>” as prepared by a TAC working group composed of member states should be applied. This definition reads as follows: <i>“Substances, preparations and components may be removed manually, mechanically or chemically, metallurgically with the result that hazardous substances, preparations, and components and those mentioned in Annex II are contained as an identifiable stream or identifiable part of a stream at the end of the treatment process. A substance, preparation or component is identifiable if it can be (is) monitored to prove environmentally safe treatment.”</i></p> <p>This interpretation agreed by member states again places more emphasis on the issue of sound monitoring of hazardous substances, preparations or components at the end of a treatment process, rather than on prescribing particular treatment techniques and/or practices.</p> <ul style="list-style-type: none"> • The monitoring of the substances, preparations and components (either hazardous waste, fluids or mentioned in the entries of Annex II) that have been removed is essential to “prove” the environmentally safe treatment. This monitoring can be organised in the licensing or in the quality systems of the treatment facility. For monitoring, no new data have to be collected, because the data already gathered in accordance with the licence and with hazardous waste legislation and other waste regulations could be used. • When removed, evidence has to be given by the first treatment facility that the (final) processing, recycling and/or disposal of these substances, preparations and components has no detrimental effects on the environment. • Furthermore, in parallel to annex II of the WEEE Directive, other legislation exists, e.g.: the IPPC Directive, the draft waste directive or the waste shipment regulation. • Under the IPPC Directive a Waste Management Best Available Techniques Reference Document (BREF) exists. In the context of EU legislators’ discussion on the Thematic Strategy of Waste Prevention and Recycling and the proposal for a Waste Directive, the establishment of minimum recycling standards is under consideration, also in parallel to annex II of the WEEE Directive. This would multiply legislation on WEEE treatment, to which we object, as it is incoherent. Besides, cost-efficiency must be the guiding principle and such new recycling standards, which might be adopted, bear the risk of resulting in higher prices for consumers. <p>In conclusion, if legislators provided environmental objectives for waste treatment without describing techniques, instead of developing lists of best available techniques, annex II could be removed from the WEEE Directive. A set of outcome parameters should be considered in the context of article 6(1) WEEE. The best way to reconcile environmental objectives and to avoid detrimental effects to the competitiveness of producers is to allow a sustainable solution through technology and market forces (e.g.: raw materials prices).</p>
<p>Modify the entries of the current list in Annex II.1 to the Directive in function of technical progress including a reference to the exemptions granted under</p>	<p>We agree that annex II WEEE in its present form is not accurate (see above comments). However, we do not support this particular option. In the light of Better Regulation, there should be no link between treatment requirements and a totally independent directive, such as RoHS. Looking at the practical side of treatment, it is not possible to treat products separately to the actual status of RoHS and/or their exemptions.</p>

the RoHS Directive ¹² to ensure that for those applications, the hazardous components, parts and substances are removed.	
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EVIDENCE:

UNU-EHS study (e.g.: chapter 9.5, p.217; chapter 10.51, p.281; chapter 10.5.4, p. 291; chapter 11.2, p. 297)

TAC working group document

CONCLUSIONS

ORGALIME underlines the need to better streamline existing EC legislation that applies on electrical and electronic equipment at the same time, and the WEEE Directive, the Waste Framework Directive, the EuP Directive, the EMC Directive and the recently adopted so-called New Legislative Framework (former Marketing of Goods package) more particularly.

Many of the issues discussed at this moment in time, can in our view not be reliably solved within the WEEE directive but require a broader perspective in the EU and even beyond (e.g.: material based recycling/recovery targets or how to foster sound environment treatment in other regions of the world).

For the upcoming review of the WEEE Directive, ORGALIME does not support options that would run counter to the principle of Better Regulation and Simplification or result in unnecessary additional administrative burden or costs on companies, many of which are SMEs.

At this still early stage and in the absence of data that would be representative for the EU as a whole, proper market surveillance and enforcement are in our view of major relevance to the effectiveness of the Directive both, in terms of its environmental objectives, but equally in terms of legal certainty and cost effectiveness for EU manufacturers of electrical and electronic equipment.