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Comments on the European Commission Waste Legislative Proposals of the Circular Economy Package

INTRODUCTION

Orgalime represents European metalworking, mechanical engineering, electrical and electronic engineering industries and comments on the Commission's waste legislative package against the sector's experience with the implementation of the waste stream specific Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE), the Ecodesign Directive 2009/125/EC and its over 40 implementing measures on our industries, as well as our broader vision on [how Circular Economy can work for European Manufacturing](#).

Orgalime generally welcomes the tabling of the waste legislative proposals as a first concrete action within the new Circular Economy Package. Focusing on the end-of-life stage of products and having the right framework in place end-of-pipe is the starting point for the transition to a more Circular Economy (see [Orgalime's position paper on the Action Plan Circular Economy of 18 April 2016](#)).

We see the following essential waste policy related measures for a more circular economy to develop in practice:

- *An as strict as possible landfill policy*
We note that the Commission has proposed a 10% binding landfill target on municipal waste by 2030, with no intermediate targets, unlike the earlier 2014 proposal. We also note the proposal for a landfill ban of all waste separately collected in compliance with the Waste Framework Directive. In our view, the proposal could be even more ambitious: we strongly support a complete landfill ban for wastes that are recyclable and/or subject to specific EU waste management legislation, such as Directive 2010/29/EU on Waste Electrical and Electronic Equipment (WEEE) or Directive 2013/56 on waste batteries and accumulators. As long as waste appliances are still landfilled, product design efforts will not translate into environmental gains but just costs for manufacturers and consumers.
- *A proper implementation and enforcement of EU waste policy acquis, notably in the area of waste shipments, recycling and recovery targets and waste treatment*
Repair, reuse and recycling of products can be negatively impacted as long as waste appliances are still illegally shipped outside Europe, which still remains the case for electrical and electronic equipment (EEE). Product design efforts will at best not bring benefits in Europe and at worst not translate into environmental gains, while causing costs for manufacturers and consumers, as long as illegal shipments are not stopped.

Orgalime, the European Engineering Industries Association, speaks for 42 trade federations representing 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 €1,800 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.

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Enacting ambitious recycling and recovery targets under EU waste legislation and harmonised waste treatment standards to ensure good quality recycling are further important factors for more circularity without compromising other environmental and human health aspects. With regard to waste electrical and electronic equipment (WEEE), we call for applying article 8(5) of the WEEE Directive and transfer the contents of the existing harmonised European WEEE treatment standards into a legally binding delegated act. We consider this solution as more ambitious and effective than the voluntary certification of waste treatment facilities that the Action Plan Circular Economy suggests.

- *Improving not only quantities, but qualities of recycling streams*
In addition to above suggestion regarding WEEE treatment, the setting and enforcing of minimum quality criteria for secondary raw materials based on ISO and EN standards are a further precondition to secure a high level of protection of workers and consumers as the economy becomes more circular.
- *Complementing Extended Producer Responsibility with “shared responsibility obligations” for all actors in all steps of the WEEE management chain*
Today’s producer responsibility principle has been established at a moment in time when “waste was a cost” that had to be borne by someone. Today, however, WEEE has a value that changes the market reality and surroundings for the EPR principle in this sector drastically. Other actors than producers are increasingly handling waste EEE for economic reasons while not being obliged to respect the objectives of the WEEE Directive. In fact, two thirds of WEEE are handled by economic operators other than producers leading to massive flows of WEEE outside the producer driven WEEE systems. Many “official” and “unofficial” commercial collectors handle WEEE, from scrap dealers, to retailers, to municipalities, to waste management companies, to recycling companies and other. In the absence of enforcement powers, producers cannot control such illegal actors. The recast WEEE Directive acknowledges this new reality when stipulating in article 16(4) that “*Member States shall collect information, including substantiated estimates, on an annual basis, on the quantities and categories of EEE placed on their markets, collected through all routes, prepared for re-use, recycled and recovered within the Member State, and on separately collected WEEE exported, by weight*”. The new Waste Directive should not fall behind the WEEE recast Directive but similarly recognise this new reality and ensure that the EU policy acquis and standards are also respected in these other routes and their actors. Article 8a (new) should be shaped in this way.
- *Improving and better harmonising WEEE reporting obligations can support the transition to a more Circular Economy*
Proposals aimed at improving and better harmonising national reporting obligations on the EU’s waste policy acquis can bring benefits, including for the case of WEEE. However, these obligations apply and should continue to apply at the Member State’s level. This is valid also for the newly suggested article 16(5) of the WEEE Directive 2012/19/EU.

Against this background, Orgalime generally considers the package as a positive step in the right direction. However, to ensure consistency with existing (recast) legislation and to maximise its impact, we suggest a number of changes to the present package, including on the suggested modified or new definitions, extended producer responsibility provisions and prevention of waste measures of the proposal for an amendment of the Waste Directive 2008/98/EC.

I. PROPOSAL FOR AMENDING THE WASTE DIRECTIVE 2008/98/EC

Looking more in depth into the content of the Commission proposal for amending the Waste Directive 2008/98/EC, Orgalime has the following comments and suggestions:

Article 3 on definitions

Municipal waste: We note that the proposed new definition of municipal waste would cover also waste electrical and electronic equipment (WEEE), batteries and accumulators and waste batteries and accumulators, and packaging and packaging waste, which, at least for the case of WEEE, we consider inappropriate. The inclusion of WEEE should be removed from the definition.

In our experience when WEEE, waste batteries and packaging waste are included and collected in mixed waste, the relevant figures and statistics risk not being properly reported. In addition, conflicts with existing producer responsibility obligations under Directive 2012/19/EU could arise. This should be avoided and addressed under a revised Waste Framework Directive, including in the proposed article 11.

Preparing for re-use: We welcome the concept that waste should be collected by a recognised preparation for re-use operator. However, we note that the current wording may create confusion between “re-use”, which occurs before a product becomes waste, and “preparation for re-use”, which takes place when the product has already become waste. Additionally, a standard is under development on preparation for re-use limited to EEE which have become waste, and the definition of the amended Waste Directive should be fully consistent with it.

Final recycling process: It is crucial to know how this process is measured and calculated in view to fulfilling the targets set by waste directives. It is also important to highlight that a definition of “end-of-waste” status is captured under standard EN 50625-1:2014¹.

Finally, it should be taken into account that CENELEC TC111X WG6 is currently finalising a draft specification for the final treatment of WEEE fractions – copper and precious metals. The work has involved sound and in-depth discussions on the definition of final treatment, which has replaced final processing. We call on regulators and policy makers to ensure consistency with this work for the case of WEEE.

Articles 8 and 8.a (new) on Extended Producer Responsibility

Initially, before the tabling of the Circular Economy Package, the Commission was striving for a guidance document to develop a common understanding on Extended Producer Responsibility (EPR). In our view, this option would still be more appropriate for the case of WEEE, since a waste stream specific directive is already in place. Parallel legislative requirements in the Waste Directive should not undermine existing waste streams specific sector legislation that has been recast recently and is currently undergoing transposition and implementation in Member States.

Subject to the WEEE Directive 2012/19/EU and the Ecodesign Directive 2009/125/EC, the sector sees the following inconsistencies arising from the proposal to amend the existing article 8 and to introduce a new article 8(a):

Revised article 8(1): EPR schemes are a tool for producers to meet EPR obligations (see recital 23 and article 12.3 WEEE). The revised article 8(1) states that Member States could set up or set conditions for EPR schemes, which would by nature conflict with the principle of (extended) producer responsibility to organise WEEE management. Member States should indeed allow producers to fulfil any extended producer obligation either individually or by joining a collective scheme, which should be the corrected wording of article 8(1).

Revised article 8(2): the Commission proposes a new sentence to be included in article 8(2) of the current Waste Framework Directive. This provides for Member States to adopt measures to encourage product design to facilitate recycling and preparation for re-use. We caution against possible overlaps with the work ongoing under the Ecodesign Directive. Product policy measures need to be fully harmonised in the EU to guarantee the functioning of the internal market for these products, while waste policy measures by nature represent minimum harmonisation measures. Revised article 8(2) should not lead to a fragmentation of the internal market.

New article 8.a.3.d: The current proposal requires EPR schemes to make information regarding the financial contributions paid by producers publicly available. The current wording could unintentionally create issues as it may be possible to derive producers’ market shares from this information. Instead, we suggest to request the disclosure of “*the aggregated fees applied by the scheme*” to avoid competition issues.

¹ Standard EN 50625-1:2014 defines end-of-waste as follows: “[...] result of treatment whereby the resulting fractions are no longer classified as waste. Fractions that cease to become waste, following a recovery or recycling operation in compliance with specific criteria according to Article 6 of Directive 2008/98/EC, are regarded as secondary materials and so have achieved end-of-waste status [...]”

New article 8.a.4.a: This provision requires Member States “to ensure that financial contributions paid by producers should cover the entire cost of waste management for products it puts on the market”. Recast article 12 WEEE, however, reads as follows: “Member States shall ensure that producers provide at least for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households that has been deposited at collection facilities set up under Article 5(2) WEEE”.

The Commission proposal for a new article on EPR should not result in new obligations or additional financial burden on producers who already finance the collection of their relevant waste streams under the recast WEEE Directive and the Batteries Directive. We see no need to further harmonising producer financing obligations for WEEE for the purpose of a level playing field.

Manufacturers should indeed be held responsible for financing the waste that has been deposited at collection facilities. Extending EPR to financing collection from private households, however, has no demonstrated environmental benefit and would make producers responsible for activities they cannot control or influence. Such a change would lead to significantly higher costs for WEEE management and for society as a whole.

The actors other than producers involved in WEEE management should be held responsible for properly gathering and reporting data on the waste they collect. We highlight that in our sector we face shortcomings and challenges in this respect.

Additionally, valuable parts of WEEE are often harvested by other actors while the residual, non-valuable waste is handed over to producers. Therefore, producers bear the costs of the less/non valuable parts, resulting in an unfair practice.

New article 8.a.4.b: this provision states that “Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations: [...] b) are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably by taking into account their re-usability and recyclability”.

We acknowledge the good intention to reward producers for their efforts in ever more environmental conscious product design. However, the concept of modulated fees shows inherent limitations, which render it unlikely that the instrument can develop into an effective incentive for producers:

- The main cost for producers is not recycling, but collection and logistics that add up to 90% of the costs encountered by producers. Modifying the recycling part of the fee appears somewhat insignificant.
- Considering today’s WEEE reality of “WEEE having a value”, “better designed” products are more likely to leak to other actors than producers, and therefore the benefits of a modulated fee, if any, would not arise for producers.
- We see difficulties in determining “better” from “worse” products to be incentivized, since their “real” end-of-life costs and their “recyclability” can only be determined years after the product has been placed onto the market, depending on the real-life recycling technology to be in place at that specific point in time. When placing the product on the market, the recycling technology to be in place once the product will become waste remains uncertain. Market distortion and unfair competition can arise from modulated fees.

New article 8.a.5: Finally, the Commission proposes that Member States establish an independent authority to oversee the implementation of extended producer responsibility obligations. In some countries, for example in France, an instance responsible for the monitoring and concertation of EPR obligations already exists. Flexibility should be left to Member States concerning the type of body to carry out these tasks.

For these reasons and considering the many specificities of the different waste categories in scope, we believe that guidance rather than binding minimum requirements would be the more appropriate way forward. Such an approach would avoid unnecessary inconsistencies with already existing schemes for waste streams, such as WEEE, batteries or end of life vehicles. At the same time, it would move towards more harmonisation at the EU level for waste streams that remain unregulated today.

Finally, any reference to a “scheme” can only apply to Member States where such “scheme(s)” are installed but not to those who have other means to transpose the waste directives.

Article 9 on measures for waste prevention

The Commission proposes a new article 9 requiring Member States to take measures to prevent waste generation. Orgalime highlights the following points:

Any measure possibly considered by Member States should be in line with implementing measures adopted under Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products to secure the functioning of the internal market for these products.

Any system created to promote reuse activities for electrical and electronic equipment should be in accordance with Directive 2012/19/EU on WEEE.

Finally, we propose a new indent promoting the use of digitalisation and ICT enabled equipment for the purpose of optimising resource use in industrial activities and processes management at all levels, including waste management activities, and therefore as an effective besides available means for waste prevention.

II. PROPOSAL FOR AMENDING DIRECTIVE 2012/19/EU ON WEEE

In general, proposals aimed at improving and better harmonising national reporting obligations on the EU's waste policy acquis can bring benefits. However, these obligations apply and should continue applying on Member State level. This is valid also for the newly suggested article 16(5) of the WEEE Directive 2012/19/EU.

Member State's reporting obligations should in particular include substantiated estimates, on an annual basis, on the quantities and categories of EEE placed on their markets, collected through all routes, prepared for re-use, recycled and recovered within the Member State, and on separately collected WEEE exported, by weight. This should also be added to the proposed amendment of articles 16(5) of the WEEE Directive.

III. PROPOSAL FOR AMENDING DIRECTIVE 1999/31/EC ON THE LANDFILL OF WASTE

New article 5.3.f: The Commission proposed a landfill ban on all waste separately collected in compliance with the Waste Framework Directive.

New article 5(5): The Commission also proposed a 10% binding landfill target on municipal waste by 2030, with no intermediate targets, unlike their previous 2014 proposal.

We are in favour of strong landfill rules and in our view, these proposals could be even more ambitious: we strongly support an entire landfill ban for wastes that are recyclable and/or subject to specific EU waste management legislation, such as WEEE or waste batteries.

As noted above, continued landfilling of these waste streams undermines companies' products design efforts.

CONCLUSIONS

Orgalime believes that the revision on the waste package offers opportunities to support a more circular economy that should be explored.

An as strict as possible landfill policy, ambitious targets and high quality waste treatment activities, strong waste shipment rules and shared responsibility for all actors involved in waste treatment are crucial prerequisites.

Adjustments in the current proposal amending Directive 2008/98/EC on waste with regards to EPR, modulated fees, definitions and measures for waste prevention are needed to avoid overlap with existing legislation and/or undesired effects.

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