



ORGALIME POSITION PAPER ON

Review of Directive 2002/95/EC (RoHS): Categories 8 and 9

Interim Report by ERA Technology (March 2006)

Brussels, 24 May 2006

Orgalime¹ welcomes the ERA interim report as a valuable contribution to the review of categories 8 & 9, and offers the following comments:

1. Timing options (clause 14.1, pages 188/189)

Orgalime supports the approaches outlined in **option #2 and option #3**, but the setting of any specific preferred dates would require the close involvement of the relevant product sector.

We also support **option #6** as it will help to simplify the exemption process by avoiding large numbers of very specific exemptions.

2. Proposed definition of Category 8 (clause 4.3, page 35)

Orgalime generally welcomes the clarification given by the report's definition
"Equipment that meets Article 3(a) of RoHS AND is within the scope of Directives 90/385/EEC, 93/42/EEC or 98/79/EC".

¹ **Orgalime as the European Engineering Industries Association** represents 3 industrial branches (metal-working, mechanical engineering and electrical engineering) that manufacture over 27% of total EU manufacturing output (initial estimates set the industry's output at 1598 billion euro in 2005). Orgalime has 35 members trade federations in 24 European countries. The industry not only represents more than one quarter of the output but also a third of the exports of the EU's manufacturing industries. It is the largest manufacturing sector in Europe. It is also the largest industrial employer in the EU25, providing some 10 million jobs.

3. Proposed definition of Category 9 (clause 4.3, pages 35/36/37)

Orgalime generally welcomes the clarification given by the report's definition

"Equipment whose primary function is monitoring, control or measurement;

AND is placed on the market (a) as a finished product;

AND is not an integral part of a large-scale stationary industrial tool;

AND is not part of another type of equipment that is outside the scope of Directive 2002/96/EC

where:

- "monitoring" implies a function of a product which measures a function and then carries out calculations or processes on this data input from sensors, detectors, electrodes or other sources;
- "control" implies a function of a product which makes adjustments in response to input data;
- "measurement" implies a function of a product which determines a parameter;
- a "finished product" is any device that has a "direct function";
- "direct function" is defined as "one that fulfils the intended use specified by the manufacturer for use by the end user";
- "part of another type of equipment" implies that the "product" is specifically designed to be installed in the equipment which could for example be an aircraft, train, ship but may also be an installation such as a railway network, an airport or road infrastructure;
- for a "monitoring and control instrument" to be defined as part of a building and so be outside the scope of the WEEE Directive:-
 - the equipment would form part of the infrastructure so that its removal is possible only by destruction of part of the building or;
 - it would not normally be practical to remove it and install it at another location and would not normally be removed once fitted
- for guidance on whether a product is a part of a large scale-stationary industrial tool, refer to the EC's FAQ guidance."

Orgalime however proposes:

- **to replace indent 4**

'a "finished product" is any device that has a "direct function"

with

'a "finished product" is any device that has a "direct function", ***its own enclosure and - if applicable - ports and connections intended for end users***'.

This additional text is already included in the existing Commission FAQ's, and helps differentiate between components and finished products² (both of which may have a "direct function").

- **To replace indent 7**

"for a "monitoring and control instrument" to be defined as part of a building and so be outside the scope of the WEEE Directive:-

² Please see Orgalime Guide to practical understanding of the scope of Directive 2002/96/EC (WEEE) and 2002/95/EC (RoHS), chapter 3.6 regarding "finished products", page 8ff.

- the equipment would form part of the infrastructure so that its removal is possible only by destruction of part of the building or;
- it would not normally be practical to remove it and install it at another location and would not normally be removed once fitted”

with

“In the case of the equipment being incorporated into a building and so be outside the scope of directive 2002/96/EC, it would mean that

- **the equipment would form part of a “fixed installation”, and/or**
- the equipment would form part of the infrastructure so that its removal is possible only by **damage to the infrastructure/building** or;
- it would not normally be practical to remove it and install it at another location and would not normally be removed once fitted”.

The present wording of indent 7 seems to duplicate the definition of “monitoring and control instruments”, which is provided in the first paragraph “Equipmentscope of directive 2002/96/EC”. Keeping indent 7 seems a logical mistake to us that would risk misunderstandings and misinterpretations of the directive. The provided alternative proposal aims at clarifying the particular questions surrounding the case of monitoring and control instruments being incorporated into a “building” in the context of “another type of equipment that is outside the scope of directive 2002/96/EC”.

Orgalime asks for **consistency** in interpretation when discussing the scope of directive 2002/95/EC and the potential inclusion of category 8 and 9 equipment in particular. In the interest of a harmonised approach, **Orgalime** has developed a **Guide to Practical Understanding the Scope of Directive 2002/96/EC (WEEE) and 2002/95/EC (RoHS)**, which we submit annexed to this paper. We particularly ask ERA to follow the common industry understanding expressed in chapter 3.6 of Orgalime’s scope guide regarding “finished products” and remove any potential misunderstanding from ERA’s interim report related to this issue.

4. Fixed installations (clause 4.2, pages 31/32)

Orgalime supports the definition given in the Commission FAQ document – in particular we are strongly of the opinion that the “fixed installations” exclusion is derived from Article 2(1) of the WEEE Directive, and that this exclusion is both, separate from and additional to the exclusion for “large-scale stationary industrial tools”, which is given in category 6.

The Orgalime WEEE/RoHS Scope Guide has received widespread acceptance from industry (both EU and beyond) and aids manufacturers in determining the “fixed installation” definition as given in the Commissions FAQ’s. Any deviation from this definition at this late stage could cause significant confusion for both manufacturers and regulators, and could disrupt the functioning of the internal market.