



Commission proposal for amending Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)

ORGALIME POSITION

Brussels, 23 June 2003

1. INTRODUCTION

In accordance with the provisions of the Joint Declaration¹ agreed between the European Parliament, the Council of Ministers and the Commission during the final stage of the conciliation procedure for the WEEE directive at the end of 2002, the Commission has adopted a proposal for amending the directive on 29 April 2003.

This amending proposal covers one specific matter, that is the financial implications on the balance sheets of producers, which resulted from the original wording of article 9 on financing of “*historical*” WEEE from users **other than private household**, that is waste arising from equipment, held by professional users which was put on the market before 13 August 2005. The present amendment **does not affect** the provisions for dealing with **WEEE from private households**, which are specified in article 8 of the directive.

Although the institutions had been informed of this issue in the course of the adoption of the WEEE directive, the amendments to the texts could not be directly addressed during the conciliation procedure for formal reasons alone.

Orgalime welcomes the amendment, which, to our mind, will go a long way to providing the legal certainty which producers require in order to be able to manage the issue of contingent liabilities and accruals brought to their attention by auditors when the original text of the directive was adopted and the issue of WEEE from producers who are no longer present on the market.

2. DETAILED COMMENTS

Accounting implications

In the course of the legislative procedure, industry has drawn the attention of the institutions to the possible effects of accounting rules, which may require the posting of accruals in the balance sheets of producers, who have supplied *historical* WEEE to non-household users. Given this liability, companies might have to set up accruals for all equipment supplied by them in the past at one time and at the latest in the first year of the implementation of the WEEE directive into national laws. Consequently, the balance sheets of such companies would, in that year, show a severe loss, which could lead many companies to being considered as technically insolvent.

¹ OJ L 37, 13.02.2003, page 39

Orgalime's opinion is underpinned by the in depth analyses carried out by four different auditors who were asked to analyse the text of the WEEE directive and comment on its implications from an accounting perspective².

The Commission's proposal solves the issue

Orgalime believes that the Commission's proposal provides the necessary clarity as to the producer who might be responsible to take back the historical WEEE, as well as the moment when this obligation will arise. As a consequence, any financial obligations in terms of liabilities and accruals for a specific producer would only occur for specific products at a specified moment in time, that is when it becomes WEEE: the balance sheet of the producer, who supplies a new product, would then reflect this specific obligation.

The Commission's proposal also provides for the much less usual case when no new product is supplied: in this case, the costs of dealing with the WEEE from users other than private households in accordance with the provisions of the directive, are borne by the user. The Commission thereby aims to ensure that the environmental objectives of the directive are also met in such a case. Orgalime believes that this approach better reflects the reality of how waste from such products is at present and should be dealt with in B2B relationships.

We therefore welcome the Commission's proposal.

3. CONCLUDING REMARKS

The WEEE directive should be transposed into the national legislation of Member States before 13 August 2004.

In order to ensure that Member States adopt measures when implementing national legislation, which would not have an unintended but substantial financial impact on producers, Orgalime urges the institutions to agree upon a solution as soon as possible based on the Commission's proposal for amending article 9, if possible during the course of 2003.

Meeting this time schedule would be the only means of ensuring the necessary legal and financial certainty for companies producing products for users other than private households all across the European Union, while at the same time respecting the general environmental objectives of the WEEE directive.

² **Price Waterhouse Coopers**, *Position paper regarding the contingency accounting in connection with the EEC-directive on electric and electronic scrap (WEEE)*, 19 August 2002;

KPMG, *balance sheet effects of art 7(3) and art 8 of the Directive of the European Parliament and of the Council on disposal of waste electrical and electronic equipment*, 19 August 2002;

Ernst and Young, *accounting effects of the proposed EU Directive on waste electrical and electronic equipment. Should firms in the electrical and electronic industry make provision for future obligation to finance the cost of collection, treatment, recovery and environmentally sound disposal of waste electrical and electronic equipment in their financial statement for 2002 and in subsequent years?*, August 2002;

BDO Deutsche Warentreuhand AG, *Statement regarding the set up of accruals in connection with the EU directive concerning the disposal of waste electric and electronic equipment (WEEE)*, 16 August 2002