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PROPOSAL

from: European Commission
dated: 15 March 2012

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Subject: Proposal for a Regulation of the European Parliament and of the Council on a European Union energy-efficiency labelling programme for office equipment amending Regulation (EC) No 106/2008 on a Community energy-efficiency labelling programme for office equipment

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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EUROPEAN COMMISSION

Brussels, 15.3.2012
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on a European Union energy-efficiency labelling programme for office equipment
amending Regulation (EC) No 106/2008 on a Community energy-efficiency labelling
programme for office equipment**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Regulation (EC) No 106/2008 sets out the rules for implementing the Energy Star programme for office equipment (computers, displays, printers, copiers, scanners, etc.) in the European Union. The Energy Star programme is implemented in the EU on the basis of an Agreement between the Government of the United States of America and the European Community on the coordination of energy efficiency labelling programmes for office equipment¹ which expired in December 2011. On 12 July 2011 the Council adopted a Decision authorising the Commission to negotiate a new 5-year agreement and the negotiations were concluded on 29 November 2011. The purpose of this proposal for an amendment of Regulation (EC) 106/2008 is to adapt the implementation of the Energy Star programme to a new agreement. A proposal for a Council Decision for the signature and conclusion of the new Energy Star Agreement is presented to the Council with this proposal for an amendment of Regulation (EC) 106/2008.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The proposals for the new Agreement and the amendment of Regulation (EC) 106/2008 take into account the experience gained during the first two periods of implementation of the Energy Star programme in the EU from 2001 to 2010, as well as the consultations of the European Union Energy Star Board.

The detailed rationale for continuing the Energy Star Programme for a third period of five years is set out in the Communication on the implementation of the Energy Star Programme in the period 2006-2010², and in the Recommendation from the Commission to the Council to open negotiations for the second Energy Star Agreement. The main points are summarized hereinafter:

- Energy Star has been very effective in steering the office equipment market towards greater energy efficiency. It has succeeded in reducing the electricity consumption of office equipment sold in the last 3 years by around 11 TWh, i.e. by approximately 16 %. As a result more than EUR 1.8 bn have been saved on energy bills and 3.7 Mt of CO₂ emissions have been avoided.
- It provides a flexible and dynamic policy framework, particularly well suited to fast-evolving products such as ICT.
- The EU and the US should continue to cooperate on developing product specifications with the same level of requirements being introduced at approximately the same time by both entities.
- Given the intention of the US to introduce third-party certification to the programme, the agreement should continue under two distinct product registration systems with

¹ OJL 381, 28.12.2006, p.26.

² COM(2011)337 final

self-certification applied in the EU and third-party certification applied in the US. The end of the mutual recognition principle is not expected to have a negative impact on manufacturers participating in the EU programme as they are focused primarily on the EU market.

- Manufacturers have indicated the requirement for central government authorities to purchase office equipment at least as efficient as Energy Star as the primary driver for their participation in the programme. Moreover, as a significant proportion of them participate in public tenders in Member States other than where they are established, a reinforcement of the provisions on public procurement should be considered. Additional rationale for strengthening the provisions on public procurement is provided in the Impact Assessment³ accompanying the proposal for an Energy Efficiency Directive⁴.
- Although the available data shows a high degree of compliance, the Commission and the Member States should cooperate closely on the thorough enforcement of the programme and should review the effectiveness of this enforcement no later than 18 months after the conclusion of the agreement. In this connection the respective obligations of the Commission and the Member States regarding the enforcement of the programme should be clarified.
- The Commission will continue to monitor the impact of the changes proposed by the US and of the Energy Star Programme on energy savings, manufacturers and compliance. At least two years before the expiry of the new agreement it will analyse possible options for addressing the energy consumption of office equipment, including replacing Energy Star with alternative policy instruments.

3. LEGAL ASPECTS OF THE PROPOSAL

The primary purpose of this proposal for an amendment of Regulation (EC) 106/2008 is to adapt the implementation of the Energy Star Programme to the new Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment.

The only substantive amendment to the proposal is the deletion of Article 4(4) of Regulation 106/2008, which states that "Office equipment products for which use of the Common Logo has been granted by USEPA shall be deemed to comply with this Regulation, unless there is evidence to the contrary". Until now the programme in the EU and the US has operated on the basis of self-certification by manufacturers. The success of the programme in the EU is considered to be partly based on such lightweight product registration procedures. However, the US has decided to move to third-party certification for products placed on the US market. Such an approach is not recommended for the EU market. It could negatively impact on the programme and place SMEs at a disadvantage in relation to big manufacturers. Thus under the new agreement the programme will have to function under two separate product-registration systems. Products placed on the EU market will need to be registered with the European Commission, while products placed on the US market will need to register through

³ SEC(2011) 779 final
⁴ COM(2011) 370 final

third parties accredited under the US Energy Star Programme. This means that the principle of mutual recognition will no longer be applicable:

Other amendments aim at updating the references to existing legislation (in Article 4) and to the new agreement (in Article 11), as well as updating the name of the Energy Star Board (in Article 8). Article 12 provides a clarification of the responsibilities of the Commission and Member States for the enforcement of the Programme. Article 4 and 7, as well as Article 13 and 14 are merged.

The Communication on the implementation of the Energy Star programme in the period 2006-2010 concluded that consideration should be given to strengthening the provisions on public procurement. However as a timely implementation of the Energy Star programme under the new agreement depends on the swift adoption of the amended regulation substantial changes in the text are not being proposed. Instead, the reinforcement of the public procurement provisions will be covered by the proposal for an Energy Efficiency Directive⁵ which addresses public procurement in a comprehensive way. The amended Regulation should take into account the provisions on public procurement of this Directive.

The Commission will continuously monitor the impact of the changes proposed by the US and of the Energy Star Programme on energy savings, manufacturers and compliance. At least two years before the expiry of a new Agreement it will analyse possible future options for addressing the energy consumption of office equipment, including replacing Energy Star with alternative policy instruments.

4. BUDGETARY IMPLICATIONS

The proposal aims at continuing the implementation of an existing programme and therefore has no impact on operational and administrative appropriations and on human resources.

⁵ COM(2011) 370 final

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment⁶ implements the Energy Star Programme in the Union on the basis of the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficiency labelling programs for office equipment⁷. This Agreement expired on 28 December 2011 and the Council adopted a decision authorising the Commission to negotiate a new five-year agreement with the United States. Negotiations regarding a new agreement were concluded on 29 November 2011. Therefore, the reference to the new agreement should be inserted.
- (2) It is also necessary to update the references to Union labelling or quality-certification schemes established by Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign

⁶ OJ L 39, 13.2.2008, p. 1.

⁷ OJ L 381, 28.12.2006, p. 26.

requirements for energy-related products⁸, Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products⁹ and by Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel¹⁰.

- (3) This amending Regulation provides a useful opportunity to insert a new name of the Energy Star Board.
- (4) Article 4(4) should be deleted to take into account Article VI of the new agreement which provides for two separate product certification schemes (self-certification for products placed on the Union market and third-party certification for products placed on the United States market).
- (5) The link with the relevant provisions of Directive [...]/./EU of the European Parliament and of the Council on energy efficiency and repealing Directive 2004/8/EC and 2006/32/EC¹¹ should be clarified in Article 6.
- (6) The respective obligations of the Commission and Member States for the enforcement of the Energy Star Programme set out in Article 12(3) should be clarified.
- (7) The assessment of the Programme should include a consideration of alternative policy options and provide sufficient time for an informed decision on a possible renewal of the agreement.
- (8) Regulation (EC) No 106/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 106/2008 shall be amended as follows:

- (1) Article 4 is replaced by the following:

"Article 4

General principles

1. The Energy Star programme shall be coordinated, as appropriate, with other European Union labelling or quality certification arrangements as well as with schemes such as, in particular, the European Union Ecolabel award scheme, established by Regulation (EC) No 66/2010, the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, established by

⁸ OJ L 285, 31.10.2009, p. 10.

⁹ OJ L 153, 18.6.2010, p. 1.

¹⁰ OJ L 27, 30.1.2010, p. 1.

¹¹ OJ L [...], [...], p. [...].

Directive 2010/30/EC and measures implementing Directive 2009/125/EC. This coordination shall include the exchange of evidence and, if appropriate, the setting of common levels of specifications and requirements across the different schemes.

2. Other existing and new voluntary energy-efficiency labelling schemes for office equipment products in the Member States may co-exist with the Energy Star programme.
 3. The Common Logo may be used by programme participants on their individual office equipment products and on associated promotional material.
 4. Participation in the Energy Star programme shall be on a voluntary basis.
 5. Without prejudice to any European Union rules on conformity assessment and conformity marking and/or to any international agreement concluded between the European Union and third countries as regards access to the European Union market, products covered by this Regulation which are placed on the European Union market may be tested by the Commission or Member States in order to verify their compliance with the requirements of this Regulation.
- (2) Article 6 is replaced by the following:

"Article 6

Promotion of energy-efficiency criteria

1. For the duration of the Agreement central government authorities within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹², shall, without prejudice to Union and national law and economic criteria, specify energy-efficiency requirements not less demanding than the Common Specifications for public supply contracts having a value equal to or greater than the thresholds laid down in Article 7 of that Directive. This Article shall apply without prejudice to the provisions laid down in Article 5 and Annex III(f) of the Directive [...]/EU of the European Parliament and of the Council on energy efficiency and repealing Directive 2004/8/EC and 2006/32/EC¹³.
 2. For the duration of the Agreement the Commission and the other Union institutions shall, without prejudice to Union and national law and economic criteria, specify energy-efficiency requirements not less demanding than the Common Specifications for public supply contracts having a value equal to or greater than the thresholds laid down in Article 7 of Directive 2004/18/EC.
- (3) Article 7 is deleted.
- (4) Article 8 is replaced by the following:

¹² OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 1422/2007 (OJ L 317, 5.12.2007, p. 34).

¹³ OJ L [...], [...], p. [...].

"Article 8

European Union Energy Star Board

1. The Commission shall establish a European Union Energy Star Board (EUESB) consisting of national representatives referred to in Article 9 and representatives of interested parties. The EUESB shall review the implementation of the Energy Star programme within the Union and shall provide the Commission with advice and assistance, as appropriate, to enable it to carry out its role as Management Entity, as referred to in Article IV of the Agreement.
2. The Commission shall ensure that, to the extent possible in the conduct of its activities, the EUESB observes, in respect of each office equipment product group, the balanced participation of all relevant interested parties concerned with that product group, such as manufacturers, retailers, importers, environmental protection groups and consumer organisations.
3. The Commission, assisted by the EUESB, shall monitor the market penetration of products bearing the Common Logo and developments in the energy efficiency of office equipment, with a view to the timely revision of the Common Specifications.
4. The Commission shall establish the EUESB's rules of procedure, taking account of the views of national representatives in the EUESB."
- (5) Article 11 is replaced by the following:

"Article 11

Preparatory procedures for the revision of technical criteria

1. With a view to preparing for the revision of the Common Specifications and of the office equipment product groups covered by Annex C to the Agreement, and before submitting a draft proposal or replying to USEPA in accordance with the procedures laid down in the Agreement and in Council Decision [...] of [...] concerning conclusion of the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment¹⁴, the steps set out in paragraphs 2 to 5 shall be taken.
2. The Commission may request the EUESB to make a proposal for the revision of the Agreement or of the Common Specifications for a product. The Commission may make a proposal to the EUESB for the revision of the Common Specifications for a product or the Agreement. The EUESB may also make a proposal to the Commission on its own initiative.

¹⁴ OJ L [...], [...], p. [...].

3. The Commission shall consult the EUESB whenever it receives a proposal for revision of the Agreement from USEPA.
 4. When giving their views to the Commission, the members of the EUESB shall take into account the results of feasibility and market studies and available technology for reducing energy consumption.
 5. The Commission shall take particular account of the objective of setting Common Specifications at an ambitious level, as provided for in Article I, paragraph 3, of the Agreement, with the aim of reducing energy consumption and shall have due regard for the technology available and the associated costs. In particular, the EUESB shall, before giving its views on any new Common Specifications, take into account the latest results of ecodesign studies."
- (6) Articles 12 and 13 are replaced by the following:

"Article 12

Market surveillance and control of abuse

1. The Common Logo shall be used only in connection with the products covered by the Agreement and in accordance with the Common Logo user guidelines contained in Annex B to the Agreement.
2. Any false or misleading advertising or use of any label or logo which leads to confusion with the Common Logo shall be prohibited.
3. The Commission shall ensure proper use of the Common Logo by undertaking or coordinating action described in Article IX, paragraphs 2, 3 and 4, of the Agreement. Member States shall take action as appropriate, notably described in Article IX, paragraph 5, of the Agreement to ensure conformity with the provisions of this Regulation in their own territory and shall inform the Commission. Member States may refer evidence of non-compliance by programme participants to the Commission for initial action.

"Article 13

Review and revision

Before the Parties to the Agreement discuss its renewal in accordance with Article XIV, paragraph 2 thereof the Commission shall evaluate the effectiveness of the Energy Star programme in improving the energy efficiency of office equipment and in providing market opportunities for manufacturers, and assess alternative policy options such as those provided by Union legislation, notably Directive 2009/125/EC and 2010/30/EC. The results of such an evaluation and assessment shall be reported to the European Parliament and to the Council at least two years before the expiry of the Agreement."

- (7) Article 14 is deleted

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President