



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.3.2006
SEC(2006) 381 final

RECOMMANDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open negotiations for an Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programmes for office equipment

1. EXPLANATORY MEMORANDUM

1. GROUNDS AND OBJECTIVES OF THE PROPOSED AGREEMENT

This Recommendation from the Commission to the Council is concerning the authorisation for the Commission to open negotiations on an agreement with the U.S.A. establishing the basis for a jointly managed programme aiming at fostering the energy efficiency of office equipment – the ENERGY STAR programme. Since 2001 the EC and the U.S.A. have jointly carried out the ENERGY STAR programme for the energy labelling of office equipment (computers, monitors, printers, copiers etc.) on the grounds of the agreement between the U.S.A. and the EC¹ which will expire in June 2006. The programme was concluded for the EC by Council Decision 2003/269/EC² of 8 April 2003 (replacing Council Decision 2001/469/EC of 14 May 2001), and implemented in the Community by Regulation (EC) No 2422/2001 of the European Parliament and of the Council of 6 November 2001³.

Taking into account the views expressed in the EC Energy Star Board by the representatives of the Member States and by the other stakeholders, and the experiences gained during the first period of implementation of the ENERGY STAR programme, the Commission suggests to continue the EC ENERGY STAR programme and to open negotiations for concluding a new 5-year Agreement with the USA covering the period 2006 – 2011.

2. THE ENERGY STAR PROGRAMME

Efficient use of energy is one of the main pillars for a sustainable energy policy in the EC. Enhancing energy efficiency contributes to the competitiveness of European economy, to the protection of the environment by mitigating climate change, and contributes to the security of energy supply⁴.

Office equipment has an important share in the electricity consumption in the EC. A recent study carried out in Germany estimates that office equipment accounts for approximately 5% of the overall electricity consumption⁵. The consumption may increase since possible reduction of standby and off-mode losses may be overcompensated by increased energy consumption in on-mode.

In order to contribute to a sustainable energy policy meeting the objectives mentioned above, the energy performance of office equipment has to be further optimized. The ENERGY STAR programme establishes a framework for fostering energy efficiency of office equipment by coordination of labelling schemes for those products in the U.S.A. and in the EC. The ENERGY STAR programme owned by

¹ OJ L 172, 26.6.2001, p. 3

² OJ L 99, 17.4.2003, p. 47

³ OJ L 332, 15.12.2001, p. 1

⁴ Green paper on energy efficiency or doing more with less, COM(2005) 265 final of June 2005

⁵ “Technical and legal application possibilities of the compulsory labelling of the standby consumption of electrical household and office appliances”, Fraunhofer-Institute for Systems and Innovation Research, Karlsruhe, Munich, Dresden, June 2005

the US Environmental Protection Agency (EPA) is also implemented by other main trading partners worldwide (e.g. Japan, Canada, Australia, South Korea).

The ENERGY STAR programme offers the possibility to manufacturers of office equipment to register on a voluntary basis those products which comply with energy efficiency requirements (technical specifications) set by the programme and to make use of the ENERGY STAR label/logo for marketing purposes. The ultimate goal is to encourage and support procurers and consumers to purchase energy efficient devices and to use the equipment efficiently.

3. EXISTING PROVISIONS IN THE AREA OF THE PROPOSED AGREEMENT

The first agreement between the U.S.A. and the EC will expire in June 2006. A new agreement should take into account the experiences gained during the implementation of the ENERGY STAR programme in the EC during the years 2001 until 2005. The assessment of that first period is summarized in the “Communication from the Commission to the Council and the European Parliament on the implementation of the ENERGY STAR programme in the European Community in the period 2001 – 2005”.

Directive 92/75/EEC⁶ on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances provides a framework for mandatory labelling of the energy performance of “domestic” appliances. The ENERGY STAR programme regulation is a voluntary labelling scheme limited to office equipment. Office equipment is used more and more in the domestic sector and could therefore also fall under the scope of the 92/75/EC Directive. However Directive 92/75/EEC is not the most appropriate instrument for energy labelling of office equipment for the following reasons:

- the high innovation speed and rapid product development cycles in the office equipment sector offers potential for energy savings which can be best captured by swift adaptations of the efficiency performance criteria;
- coordinating the Member States’ and Community efforts with the other main world trading partners for energy labelling of office equipment minimises the costs for manufacturers, for trade and consequently for purchasers and users of office equipment.

Directive 2005/32/EC⁷ establishes a framework for the setting of mandatory ecodesign requirements for energy-using products. The ecodesign concept addresses the design phase of a product and takes into account the entire product life cycle. Energy efficiency is an important but not the only aspect. While in the framework of ecodesign measures minimum requirements for the environmental performance of a specific product, in particular energy efficiency, could be defined, the ENERGY STAR programme aims at pulling the market towards higher energy efficiency performance and provides incentives for the manufacturers to optimize the energy performance of office equipment. Therefore the ENERGY STAR programme and

⁶ OJ L 297, 13.10.1992, p. 16

⁷ OJ L 191, 22.7.2005, p. 29

possible ecodesign implementing measures are complementary for those products covered by both schemes and important synergies between those instruments could be exploited to reduce costs (e.g. common measurement methods, studies).

4. CONSULTATION OF THE ENERGY STAR STAKEHOLDERS 2001-2005

On the grounds of the Agreement currently in force the Commission was entrusted to implement the ENERGY STAR programme as management entity with the support of a consultative body – the EC Energy Star Board (ECESB). The Commission was requested to evaluate the functioning of the Agreement for that first 5 years period and draw conclusions for a possible renewal of the Agreement in consultation with the ECESB and with the US EPA.

The Commission consulted Member States, the EFTA countries (who joined the Programme in 2004) and stakeholders, in particular office equipment manufacturers and associations, experts on market transformation (energy agencies from Member States), environmental NGOs (e.g. the WWF) and consumer organisations (ANEC) during the meetings of the ECESB and its technical subgroups. In addition, the Commission organised a dedicated workshop (April 2004, Frankfurt/Main) where the general baseline of the ENERGY STAR Programme for office equipment was discussed.

There is support from all the Stakeholders for concluding a new Energy Star Agreement with the U.S.A. under the provision that the programme should be implemented more effectively in the EC. In particular, the procedure for updating the technical specifications should be simplified. This is needed in order to cope with the highly innovating character and fast product development cycles of office equipment, thereby ensuring the effectiveness and the credibility of the programme, which largely depends on the level of ambition of the technical specifications to qualify for the ENERGY STAR logo. Therefore stakeholders consider that in principle the technical specifications should be set such that at the time of criteria definition only about 25% of the models available on the market could qualify for being awarded the label.

During the meeting on 2 December 2005 the parties in the ECESB have endorsed the suggestion of the Commission staff to continue with the EC ENERGY STAR programme for a second period of implementation in the EC. The ECESB supported largely the working documents presented which take into account the modifications mentioned above.

5. SUGGESTION OF THE COMMISSION FOR THE RENEWAL OF THE ENERGY STAR AGREEMENT WITH THE U.S.A.

In view of the above, the Commission suggests to continue the participation of the EC in the ENERGY STAR programme on the following grounds:

- Efficient use of energy is one of the main pillars for a sustainable energy supply in the EC. The Commission's green paper on energy efficiency identifies the following major benefits of efficient use of energy: securing the competitiveness

of European economy benefiting from reduced spending on energy, environmental protection due to a reduction of the carbon dioxide emissions caused by energy use, security of energy supply due to reduction of energy demand and hence reduction of dependency on energy imports.

- Office equipment has an important share in the electricity consumption in the EC. Without taking measures the consumption may increase since possible reduction of standby and off-mode losses may be overcompensated by increased energy consumption in on-mode. In order to meet the targets defined in the green paper on energy efficiency, the energy performance of office equipment has to be further optimized.
- The EC ENERGY STAR programme provides a framework for coordinating the national efforts of the EC Member States to improve the energy efficiency of office equipment. A coordinated approach is necessary in order to minimise the adverse impact on industry and trade since national un-coordinated requirements would impose additional costs for manufacturers, trade and consequently purchasers and users of office equipment.
- Since office equipment is traded worldwide measures to optimize its energy efficiency should be implemented together with globally acting partners and decision makers. A harmonized approach reduces programme implementing costs and avoids confusion for consumers. The ENERGY STAR programme provides a framework for the coordination of the actions aiming at the improvement of the energy efficiency of office equipment with the U.S.A., Japan and other key markets. The ENERGY STAR programme owned by the US-EPA and managed by the European Commission for the EC and for the EEA is therefore the natural platform for measures aiming at improving the energy efficiency of office equipment through labelling.
- The ENERGY STAR voluntary programme is widely accepted by manufacturers. Furthermore, in the U.S.A. it is important for public procurement since the technical specifications have to be respected by public procurement activities. Therefore it is expected that the ENERGY STAR technical specifications will - after a certain period - be fulfilled by a large share of the equipment available on the market. Therefore significant energy savings may be achieved provided that technical specifications are demanding (e.g. covering 25% of the models as suggested in the negotiating directives in the annex) at the time of criteria definition. The Commission believes that the input of EC experts is important and contributes to developing consistent and demanding technical specifications.
- Although it is not possible to quantify to what extent, the Commission services consider that the ENERGY STAR programme for office equipment has contributed to an improvement of the energy efficiency of office equipment sold in the EU. On the other hand, significant potentials to improve the energy performance of office equipment in a cost-effective manner still exist. However rapid innovation speed and product development cycles require highly flexible instruments such as e.g. voluntary labelling schemes which may more swiftly adapt to technological and market developments.

- The programme enhances the market transparency in the office equipment sector, particularly regarding the energy performance of office equipment. This is a prerequisite for activities aiming at motivating both consumers, tertiary sector and public procurement authorities to include the energy efficiency and the total cost of ownership including the expenses for the electricity consumption in the purchasing decision. In particular, the ENERGY STAR database managed by the EPA and the Commission may be used as a basis for activities of national, regional and local authorities to promote particularly energy efficient office equipment.

It is therefore suggested to negotiate a new agreement with the US Government for a second period of 5 years. Setting such a time limitation leaves total flexibility to all involved parties to reconsider the benefit of the ENERGY STAR programme as a policy instrument to further improve the energy efficiency of office equipment.

2. RECOMMENDATION

In the light of the above, the Commission recommends:

1. that the Council authorise the Commission to negotiate an Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programs for office equipment;
2. that, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task;
3. that the Council shall issue the appended negotiation directives found in the Annex to this Recommendation.

ANNEX

NEGOTIATING DIRECTIVES

- 1. The Commission shall ensure that the draft Agreement contains the provisions listed below. These preliminary provisions have been elaborated during exploratory discussions with the Environmental Protection Agency of the U.S.A. as foreseen in Article XII, par. 2. of the Agreement currently in force⁸.**

– General Principles

A common set of energy-efficiency specifications and a common logo shall be used by the Parties for the purpose of establishing consistent targets for manufacturers, thereby maximizing the effect of their individual efforts on the supply of and demand for such product types.

The Parties shall use the Common Logo for the purpose of identifying qualified energy-efficient product types listed in Annex C.

The Parties shall ensure that Common Specifications encourage continuing improvement in efficiency, taking into account the most advanced technical practices on the market.

The Common Specifications strive to represent no more than the top 25 percent of models for which data is available at the time the specifications are set while also taking other factors into consideration.

– Definitions

For the purposes of this Agreement:

“ENERGY STAR” means the U.S.-registered service mark designated in Annex A and owned by the United States Environmental Protection Agency (“U.S. EPA”);

“Common Logo” means the U.S.-registered certification mark designated in Annex A and owned by U.S. EPA;

“ENERGY STAR Marks” means the “ENERGY STAR” name and the Common Logo, as well as any versions of these marks that may be developed or modified by the Management Entities or Programme Participants, as herein defined, including the sign or marking contained in Annex A of this Agreement;

“ENERGY STAR labelling programme” means a programme administered by a Management Entity using common energy-efficiency specifications, marks, and guidelines to be applied to designated product types;

“Programme Participants” means manufacturers, vendors, or resale agents that sell designated, energy-efficient products that meet the specifications of and who have

⁸ OJ L 172, 26.06.2001, p.3

chosen to participate in, the ENERGY STAR labelling programme by registering or entering an agreement with the Management Entity of either Party;

“Common Specifications” are the applicable energy-efficiency and performance requirements, including testing methods listed in Annex C, used by Management Entities and Programme Participants to determine qualification of energy-efficient products for the Common Logo.

– Management Entities

Each Party hereby designates a management entity responsible for implementation of this Agreement (the “Management Entities”). The European Community designates the Commission of the European Communities (“Commission”) as its Management Entity. The United States of America designate the U.S. EPA as its Management Entity.

– Administration of the ENERGY STAR labelling programme

Each Management Entity shall administer the ENERGY STAR labelling programme for the energy-efficient product types listed in Annex C, subject to the terms and conditions set forth in this Agreement. Programme administration includes registering Programme Participants on a voluntary basis, maintaining Programme Participant and compliant product lists, and enforcing the terms of the Guidelines for Proper Use of the ENERGY STAR Name and Common Logo set forth in Annex B.

The ENERGY STAR labelling programme shall use the Common Specifications listed in Annex C.

Each Management Entity shall bear the expenses for all of its activities under this Agreement.

– Participation in the ENERGY STAR Labelling Program

Any manufacturer, vendor or resale agent may enter the ENERGY STAR Labelling Programme by registering as a Programme Participant with the Management Entity of either Party.

Programme Participants may use the Common Logo to identify qualified products that have been tested in their own facilities or by an independent test laboratory and that meet the Common Specifications set forth in Annex C and may self-certify product qualification.

The registration of a Programme Participant in the ENERGY STAR Labelling Programme by the Management Entity of one Party shall be recognized by the Management Entity of the other Party.

To facilitate the recognition of Programme Participants in the ENERGY STAR Labelling Programme in accordance with the previous paragraph, the Management Entities shall cooperate in order to maintain common lists of all Programme Participants and products that qualify for the Common Logo.

Notwithstanding the self-certification procedures specified in the second paragraph of this section, each Management Entity reserves the right to test or otherwise review products that are or have been sold within its territories (in the territories of the European Community Member States in the case of the Commission) to determine whether the products are certified in accordance with the Common Specifications set forth in Annex C. The Management Entities shall communicate and cooperate fully with one another to ensure all products bearing the Common Logo meet the Common Specifications set forth in Annex C.

– Programme Coordination between the Parties

The Parties shall establish a Technical Commission to review implementation of this Agreement, composed of representatives of their respective Management Entities.

In principle, the Technical Commission shall meet annually and shall consult at the request of one of the Management Entities to review the operation and administration of the ENERGY STAR Labelling Program, the Common Specifications set forth in Annex C, product coverage, and the progress in achieving the objectives of this Agreement.

Non-parties (including other governments and industry representatives) may attend meetings of the Technical Commission as observers, unless otherwise agreed by both Management Entities.

– Registration of the ENERGY STAR Marks

The U.S. EPA, as owner of the ENERGY STAR marks, has registered the marks in the European Community as Community Trade Marks. The Commission shall not seek or obtain any registration of the ENERGY STAR marks or any variation of the marks in any country.

The U.S. EPA undertakes not to consider as an infringement of these marks the use, by the Commission or by any Programme Participant registered by the Commission, of the sign or marking contained in Annex A in accordance with the terms of this Agreement.

– Enforcement and Non-Compliance

In order to protect the ENERGY STAR marks, each Management Entity shall ensure the proper use of the ENERGY STAR marks within its territory (within the territories of the European Community Member States in the case of the Commission). Each Management Entity shall ensure that the ENERGY STAR marks are used only in the form that appears in Annex A. Each Management Entity shall ensure that the ENERGY STAR marks are used solely in the manner specified in the Guideline for Proper Use of the ENERGY STAR Name and Common Logo set forth in Annex B.

Each Management Entity shall ensure that prompt and appropriate action is taken against Programme Participants, whenever it has knowledge that a Programme Participant has used an infringing mark or has affixed the ENERGY STAR marks to

a product that does not comply with the Common Specifications set forth in Annex C. Such actions shall include, but not be limited to:

- informing the Programme Participant in writing of its non-compliance with the terms of the ENERGY STAR labelling programme;
- through consultations, developing a plan to reach compliance; and
- if compliance cannot be reached, terminating the registration of the Programme Participant, as appropriate.

Each Management Entity shall ensure that all reasonable actions are taken to end the unauthorized use of the ENERGY STAR marks or use of an infringing mark by an entity that is not a Programme Participant. Such actions shall include, but shall not be limited to:

- informing the entity using the ENERGY STAR marks of ENERGY STAR labelling programme requirements and Guidelines for Proper Use of the ENERGY STAR Name and Common Logo; and
- encouraging the entity to become a Programme Participant and register qualified products.

Each Management Entity shall immediately notify the Management Entity of the other Party of any infringement of the ENERGY STAR marks of which it has knowledge as well as the action taken to end such infringement.

– Procedures for Amending the Agreement and its Annexes A and B, and for Adding New Annexes

Either Management Entity may propose an amendment to this Agreement and to its Annexes A and B, and may propose new annexes to the Agreement.

A proposed amendment shall be made in writing and shall be discussed at the next meeting of the Technical Commission, provided that it has been communicated to the other Management Entity at least sixty days in advance of such meeting.

Amendments to this Agreement, to its Annexes A and B, and decisions to add new annexes shall be made by mutual agreement of the Management Entities.

– Procedures for Amending Annex C

A Management Entity seeking to amend Annex C to revise existing Common Specifications or to add a new product type (“Proposing Management Entity”) shall follow the procedures set forth in paragraphs 1 and 2 of the previous section, and shall include in its proposal:

- a demonstration that significant energy savings would result from revising the Specifications or adding the new product type;
- as appropriate, energy consumption requirements for various power consumption modes;

- information on the standardized testing protocols to be used in evaluating the product;
- evidence of existing non-proprietary technology that would make possible cost-effective energy savings without negatively affecting product performance;
- information on the estimated number of product models that would meet the proposed specification and approximate market share represented;
- information on the views of industry groups potentially affected by the proposed amendment; and
- a proposed effective date for the new Specifications, taking into consideration product life cycles and production schedules.

Proposed amendments that are accepted by both Management Entities shall enter into force on a date mutually agreed by the Management Entities.

If, after receipt of a proposal made in accordance with paragraphs 1 and 2 of the previous section, the other Management Entity (“Objecting Management Entity”) is of the view that the proposal does not meet the requirements specified in Paragraph 1 above or otherwise objects to the proposal it shall promptly (normally by the next Technical Commission Meeting) notify the Proposing Management Entity in writing of its objection and shall include any available information supporting its objection; for example, information demonstrating that the proposal, if adopted, would likely:

- disproportionately and unfairly confer market power on one company or industry group;
- undermine overall industry participation in the ENERGY STAR labelling program;
- conflict with its laws and regulations; or
- impose burdensome technical requirements.

The Management Entities shall make best efforts to reach agreement on the proposed amendment at the first meeting of the Technical Commission following the proposal. If the Management Entities are unable to reach agreement on the proposed amendment at this Technical Commission meeting, they shall seek to reach agreement in writing prior to the subsequent Technical Commission meeting.

If, by the end of the subsequent Technical Commission meeting, the Parties are unable to reach agreement, the Proposing Management Entity shall withdraw its proposal; and with respect to proposals to revise existing Specifications, the corresponding product type shall be removed from Annex C by the date agreed upon in writing by the Management entities. All Programme Participants shall be informed of this change and of the procedures to be followed to implement this change.

When preparing new specifications or revising existing specification, the Management Entities shall ensure effective coordination and consultation among

themselves and with their respective stakeholders, particularly with regard to the content of working documents and timelines.

– General Provisions

Other environmental labelling programs are not covered by this Agreement and may be developed and adopted by either of the Parties.

All activities undertaken under this Agreement shall be subject to the applicable laws and regulations of each Party and to the availability of appropriated funds and resources.

Nothing in this Agreement shall affect the rights and obligations of any Party deriving from a bilateral, regional or multilateral agreement into which it has entered prior to the entry into force of this Agreement.

Without prejudice to any other provisions of this Agreement, either Management Entity may run labelling programs with respect to product types not included in Annex C. Notwithstanding any other provisions of this Agreement, neither Party shall hinder the import, export, sale or distribution of any product because it bears the energy-efficiency marks of the Management Entity of the other Party.

– Entry into Force and Duration

This Agreement shall enter into force on the date upon which each Party has notified the other in writing that its respective internal procedures necessary for its entry into force have been completed.

This Agreement shall remain in force for a period of five years. At least one year prior to the end of this period, the Parties shall meet to discuss renewal of this Agreement.

– Termination

Either Party may terminate this Agreement at any time by providing three months written notice to the other Party.

In the event of termination or non-renewal of this Agreement, the Management Entities shall inform all Programme Participants which they have registered of the termination of the joint program. Moreover, Management Entities shall inform the Programme Participants which they have registered that each Management Entity may continue the labelling activities under two separate individual programs. In this case, the European Community labelling programme will not use the ENERGY STAR marks. The Commission shall ensure that itself, the Member States of the European Community and any Programme Participants which it has registered cease using the ENERGY STAR marks by the date agreed upon in writing by the Management Entities. The obligations contained in this paragraph shall survive the termination of this Agreement.

– Annex A to the agreement

Annex A defines the Common Logo.

- Annex B to the agreement

Annex B contains the guidelines for using the Common Logo.

- Annex C to the agreement

Annex C contains the common technical specifications for the equipment covered by the agreement – i.e. for computers, computer monitors, imaging equipment (printers, copiers, scanners, multifunction devices), fax machines, mailing machines – in the latest version available when the agreement is signed.

- 2. The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.**