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AeA Europe recommendations for Parliament's 2nd reading Proposal for a Framework Directive on Energy using Products (EuP)

AeA Europe would like to bring to your attention a legislative dossier (EuP) which is currently heading towards *worse* rather than *better* legislation. After having consulted with all key MEPs on this dossier, we have come to realise that the issue has been somewhat "hijacked" thereby compromising any constructive dialogue on critical aspects of the legislation, and, ultimately, threatening the dossier itself.

As proposed by the Commission, the EuP's objectives can be summarised as follows:

- Ensure the free movement of energy-using products within the EU, through the application of Article 95 of the Treaty;
- Improve the overall environmental performance of these products and thereby protect the environment, through the establishment of generic and specific eco-design requirements;
- Contribute to the security of energy supply and enhance the competitiveness of the EU economy.

The High-Tech sector fully supports the main objectives of the Commission proposal as well as the market and regulatory rationale brought in by the Council Common Position. On such a basis, High-Tech companies can **develop and design energy-using products in a competitive and innovative way towards achieving ever-greater environmental efficiency throughout the lifecycle of products.**

However, as currently intended to be amended by some Environment Committee members, the very principle of establishing a "framework" directive, for instance, may be violated through imposing deadlines for specific **product categories** to comply with eco-design requirements – a process which is originally intended to take place in separate Implementing Measures.

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The integrity of the **EU internal market** would be at risk with some proposed amendments calling for the application of a dual legal basis, namely both Articles 95 and 175, or other provisions, which would allow Member States to impose their own eco-design requirements and standards in cases different from the ones outlined in art. 95, thereby establishing a fragmented internal market for EuP.

Moreover, some of the proposed amendments prioritize certain **products and environmental aspects** over others. This would render it possible to adapt the EuP Framework to future priorities, thus limiting its effectiveness and rendering it an obsolete piece of legislation soon.

We are therefore calling upon you to bring back some sense into the current EP legislative process in order to put EuP back on track and in line with the initial objectives. We sincerely hope that EuP will be remembered for its environmental and economic achievements, and not for yet another piece of legislation jeopardising Europe's Lisbon goals of economic growth and a healthier environment and society.

Herewith attached you will find our specific views and voting recommendations on the subjects above described.

We are at your disposal should you wish additional information.

Kind regards,

James Lovegrove
AeA Europe

**Proposal for a Framework Directive on Energy using Products (EuP)
AeA Europe recommendations for 2nd reading**

AeA Europe represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. Our parent company, AeA, is the oldest and largest (3000+ Members) association in the US.

AeA, as an important producer of energy-using-products, has been following the EuP proposal and debate very closely. AeA is supportive of efforts to address products' environmental impact based on life cycle thinking and is of the view that harmonised eco-design standards and requirements should be applied across the EU to ensure the efficient functioning of the internal market and a high level of environmental and health protection.

AeA supports the overall objectives of the proposed legislative framework and its value to:

- ensuring the free movement of energy-using products within the EU;
- improving the overall environmental performance of energy-using products (EuPs), and
- contributing to the security of energy supply.

In light of the ongoing decision-making process on the proposed EuP Directive, AeA would like to put forward the following recommendations:

EuP is a Framework Directive based on LCT

- The EuP framework proposal is founded on the principle of Life Cycle Thinking. AeA supports this approach and therefore opposes any proposals aimed at prioritising some environmental aspects over others with the purpose of prioritising the regulation of specific products as part of the framework Directive. Product prioritisation should be the task of the Commission and the competent regulatory committee in cooperation with stakeholders (Consultation Forum) on the basis of the general principles established in the framework legislation.

Recommendation: support for the current text which ensures that the EuP stays a Framework Directive

Voting recommendations on Parliament proposed amendments:

N: amendment: 9 - 16 - 22 - 23 - 28 - 29 - 30 - 31 - 35 - 45 - 83 - 85 - 89- 90 - 95 - 96 - 99 - 100 - 109 -

Y: 98

Ensuring market access for compliant EuPs

- To ensure a workable legislative framework, Article 95 of the EU Treaty should be the sole legal basis of the EuP Directive. It is essential that all EU Member States introduce harmonised standards and requirements in order to avoid the creation of possible trade barriers. A dual legal basis with Article 175 or other provisions that would put at risk the

internal market could seriously undermine the competitiveness of global players who produce their products for a world-wide market. Such provisions may lead to different national regulations, which would fragment the EU internal market and oblige industry to comply with different design requirements to access various domestic markets, consequently increasing production costs for no environmental benefit.

Recommendation: *maintain Article 95 as the Directive's legal base and do not support provisions that: introduce a dual legal basis, allow Member States to introduce measures which would prevent harmonization, make reference to existing legislation only or to acts which are not a legislation yet .*

Voting recommendation:

N: amendments 2 - 3 - 7 - 17 - 25 - 26 - 27 - 36 - 43 - 44 - 58 - 76 - 77 - 78 - 79 - 80 - 81 - 102 - 103 - 121 - 122 - 123

Declaration of Conformity (DoC)

- The electrical and electronic equipment sector has been progressively moving towards suppliers' self-declarations of conformity over the last 20 years with the support of the Member State authorities and the Commission under the new approach legislation. Based on the application of the strict design control procedures as described in Annexes IV and V of the proposed Directive, self-declaration of conformity assures products' environmental quality in compliance with applicable EuP implementing measures. It allows national market surveillance authorities to focus on non-conforming products rather than on each and every product being placed on the market. Self declaration of conformity is consistent with the principle of "producer responsibility" and has already proven to be effective in ensuring products' compliance in critical areas such as product safety.
- Imposing third party verification to assess conformity is therefore not justified and would on the other hand play against the rapid introduction of new products on the market, one of the hallmarks of the ICT sector.
- The DoC should be based on harmonized standards so industry can participate in the technical requirements. Harmonized standards are accepted as the basis for other key EU Directives, such as the Low Voltage Directive (LVD) and the Electromagnetic Compatibility Directive (EMC).

Recommendation: *support for both the Commission and the Council's approach to Conformity assessment as reflected in Article 7 of the Council Common Position.*

Voting recommendations:

Y: amendments 62 - 63 - 64 - 67 - 68 - 69 - 70 - 71 - 72 - 94, but the amendment should appear as 6.b new instead of replacing 6

N: amendments 12 - 15 - 54 - 61 - 65 - 66 - 87 - 110 - 119

Recognition of international eco-labels

- AeA welcomes the Council's proposal to allow the possibility of using internationally recognised standards in the context of the application of the EuP Directive and its future daughter legislation. The Council Common Position envisages that, in addition to the EU Eco-Label, other eco-labels fulfilling equivalent conditions to those of the EU Eco-Label, should be considered to presume compliance with the eco-design requirements laid down in relevant implementing measures.

Recommendation: support for Article 8(4) as enacted in the Council Common Position. AeA also calls for a procedure to be agreed whereby stakeholders are able to submit requests to the Commission or the regulatory committee for the consideration of other eco-labels as evidence of compliance.

Voting recommendations:

Y: amendments 93 – 124 - 125

N: amendment 73

Involvement of stakeholders

- AeA welcomes the Framework Directive's approach of adopting implementing measures through a regulatory procedure in consultation with the stakeholders. In that respect, AEA welcomes the establishment of a Consultation Forum, thereby institutionalising the consultation process between the Commission and all interested parties concerned for the preparatory phases of each implementing measure. This would promote well-targeted and proportionate measures for each product and/or product group.

Recommendation: support for Article 14 as enacted in the Council Common Position. In order that interested parties may most effectively participate in the adoption of implementing measures, AeA believes that the draft rules of the Consultation Forum should be published by the Commission for the purposes of consultation and agreement with stakeholders.

Voting recommendations:

N: amendments 18 – 105 – 106 -

Y: amendments 19 – 41 –

Market surveillance should fall under Member States' competencies but needs to be further enhanced

- Market surveillance is an essential part of any conformity assessment system and should provide for a quick, effective and appropriate reaction to any misuse of self conformity declarations and Free riding. The responsibility for market surveillance lies and should continue to lie with the competent authorities in the Member States, with some improvements, which have been well captured in some of the Parliament amendments. While conducting the market surveillance, the Member States/competent authorities should utilize uniform assessment procedures based on the harmonized standards, taking into account statistics and measurement uncertainty as part of any enforcement activity.

Voting recommendations:

Y: amendments 6 – 11 – 20 – 47 – 53 – 59 – 60 – 97 – 113 – 115 – 116 – 117 – 118 – 120 -
 N: amendments 15 – 46 – 48 – 49 – 51 – 52 – 114 -

Benchmarks (Method for setting generic eco-design requirements – Annex I)

- The proposed EuP Directive envisages that manufacturers may be required to develop lifecycle assessment models of EuPs focusing on the environmental aspects identified by implementing measures in order to establish the product’s ecological profile (Annex I, Part 3 (1). Manufacturers are then required to use this assessment to evaluate alternative design solutions and the achieved environmental performance of the product against specific benchmarks identified in the implementing measure. (Annex I, Part 3 (2). AeA opposes the setting up of product’s environmental benchmarks by the European Commission as part of implementing measures, as this would lead to “static” requirements undermining ongoing innovation in product design. Similarly, while the “benchmark” is intended to serve only as a guideline or goal, its specification in an implementing measure may be viewed for enforcement purposes as a de facto “requirement.”

Recommendation: Support for the choice of specific design solutions based on a reasonable balance of environment, safety and health, technical (e.g. functionality, quality) and economic considerations, as set out in the Council Common Position (Annex I Part 3. 2. paragraph 3). Rejection of inclusion of benchmarks as part of implementing measures as laid down in Annex I Part 3 (2) of the Council Common Position.

Voting recommendations:

Y: amendments 92 – 112 -
 N: amendments 1 - 4 – 5 – 10 – 15 – 21 – 34 – 42 – 111

Voluntary measures

- AeA welcomes the Common Position to take into priority consideration the existence of voluntary measures when deciding whether an implementing measure should be issued or not. Voluntary measures can be quickly and easily adapted to new environmental priorities and to the developments of a sector such as the high-tech one where changes are rather fast. Code of Conduct and Energy Star are some examples of the workability of the effectiveness of such measures.

Voting recommendations:

N: amendments 24 – 37 – 38 – 39 – 40 – 55 – 56 – 104 -
 Y: amendments 91

We hope that you will take into consideration our recommendations, which we believe would enhance the effectiveness of the legislation in improving the environmental performance of EuPs, while ensuring market access for compliant products and protecting innovation policies.

Annex: II

Recipients of AeA Europe's position paper:

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