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## EVAP'S POSITION ON THE REVIEW STUDY RELATED TO IMAGING EQUIPMENT VOLUNTARY AGREEMENT

EVAP would like to share some initial impressions regarding the Review Study on the Imaging Equipment Voluntary Agreement (VA). As the managing entity for this VA, we believe this review had the unfortunate disadvantage of being developed to a schedule that is out of line with the development of the VA, with its considerations focused on the existing version on the VA, while discussions and negotiations were unfolding regarding a new VA. In our view this resulted in some considerations that are now surpassed by previous negotiations and the current proposal for VA revision.

Nevertheless, EVAP believes that certain considerations in the study are inaccurate and demonstrate a significant bias when addressing the topics of scope, intellectual property, base case analysis, improvement potential, and policy option. Therefore, EVAP would like to highlight some specific issues with the study on these fields:

### Scope considerations on cartridges

Most considerations in the study regarding cartridges demonstrate a significant bias towards favoring third party reuse and remanufacturing solutions without a sufficient scientific evidence.

The Signatories welcome the conclusion of the study that including requirements for cartridges in the Voluntary Agreement would not meet the market coverage requirements, would fail to address key parts of the market and would result in unfair advantages to those parts of the market not covered by the Voluntary Agreement. Clearly any provisions on cartridges must cover all parts of the market. To do otherwise would distort competition. All product categories are competing in the market but only OEM cartridges will be covered by VA criteria. EVAP has not received any interest from a suitable range and market coverage of non-OEM operators to join the VA as signatories, once they understand what becoming a signatory means in terms of compliance and enforcement.

In EVAP's view, the policy justifications for the proposal for scope extension also do not align with the principles of Circular Economy. While industry is moving into circular economy solutions and business models for the imaging equipment sector (i.e. product as a service, larger cartridges, ink tanks), the study focus mostly in the single solution of third party cartridge reuse and remanufacturing, discounting most of the options. This is of concern, since it even contradicts the logic of the priorities in the waste hierarchy, with Reuse being promoted before Reduce solutions.

The Review Study also leverages mostly data provided in studies (not Life Cycle Assessment studies) by the third party remanufacturing and refill industry players, while largely discounting contrasting findings from other robust and peer reviewed LCA studies (done in accordance to ISO standards, taking the complete printing system into account – including the critical element of paper consumption).

### Patents and Patent Enforcement

Viegand Maagøe quotes from a European Commission webpage to provide a definition for patents but seems to ignore the statements on why countries grant patents and that the Commission clearly supports upholding of patent rights:

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"Patents encourage companies to make the necessary investment for innovation and provide the incentive for individuals and companies to devote resources to research and development. Patents also imply the disclosure of the protected invention. This fosters the dissemination of innovation."; and

"Patents are a key tool to encourage investment in innovation and encourage its dissemination. The European Commission constantly monitors the need for and effects of patent-related legislation across the EU. It is working to introduce cost-saving, efficient uniform patent protection across Europe and is looking at measures to enhance patent exploitation."

### Intellectual Property considerations

The report presents intellectual property (IP) and intellectual property law as being a major barrier to third party remanufacturing. This is not correct. EU third party remanufacturers can avoid infringing OEM IP by not using patented parts and by controlling their supply chains so that cartridges that were first sold outside the EU are not remanufactured and sold in the EU.

The Section 4.1.2.4.4.2 of Report 4 dealing with IP law should be deleted. Assessment of IP law is not in the scope or methodology of the report and the report is not the appropriate forum for any such assessment. Viegand Maagoe and the writers of the Review Study are not qualified to carry out such an analysis and seem to have relied heavily on documents obtained from ETIRA's outdated website. Also, the analysis is not legally correct. The report appears to be presenting intellectual property law in the EU as unclear and not well understood. In fact, relevant EU IP law principles are straightforward, well understood and consistently applied by the courts.

### Improvement potential considerations

The considerations about improvement potential regarding energy consumption in the study include a methodological error since they are based on averaging TEC values for products with different speeds. The ENERGY STAR TEC method does not allow for comparison of products with different speeds as the TEC limit, number of jobs printed during the test, and number of pages per job are calculated according to the products' speed (see example table below). It follows that averaging TEC values for products with different speeds has very little meaning. This is done throughout the reports. Averaging TEC values for products in a narrow speed range, say 30-32ppm, has some practical meaning but averaging across a broad speed range (e.g., 20-40ppm) really has no practical meaning at all and should not be used as the basis to determine or characterize improvement potential.

	PPM	TEC value	jobs/day	images/Job	images/day	images/wk
Printer A	30	2.2	30	15	450	2250
Printer B	25	1.7	25	12	300	1500

### Base cases definition

The authors of the current study did not exercise due diligence in defining base case products. A base case, according to the prescribed methodology, is a very narrowly defined product in a given product category that is to be used as a representative product for the purposes of the study. Once that narrow product category is defined, manufacturers then provide data for several products meeting the definition and that data is averaged and used for the assessment. Using base case 2 (BC2) as an example, here is how the base case product was defined in the original preparatory study (Fraunhofer IZM):

- Colour Laser MFD,  $20 < s \leq 40$ :

Product Case	Code	Technology	Function	Image	Speed	Format	Weight	Year	Price
Product V2	EPCMC-26	EP-Copier	MFD	color	26 ipm	A3	143 kg	2005	8.000 €
V2_a	EPCMC_05	EP-Copier	MFD	color	32 ipm	A3	179 kg	2005	8.000 €
V2_b	EPCMC_28	EP-Copier	MFD	color	25 ipm	A3	118 kg	2005	7.000 €
V2_c	EPCMC_31	EP-Copier	MFD	color	23 ipm	A3	132 kg	2005	9.000 €

Note the products used for BC2 are A3 format, also note the weights.

VM defined BC2 as follows: Colour Laser MFD,  $20 < s \leq 40$ . A3 format was not specified, nor a narrow speed range, size, cost, etc. The Task 4 report notes the following on BC2- "However, the data received from stakeholders varies from approximately 15kg to 130kg". Note also that print speeds for this category of products have approximately doubled in the intervening 15 years.

The bottom line- due to lack of due diligence (or perhaps misunderstanding of the prescribed study methodology) in defining base cases the comparisons of base cases between the two studies are highly questionable at best. While there can be no doubt print products have gotten significantly faster, smaller and more energy efficient in the last 15 years there is simply no point in comparing a 15kg A4 product to a 132kg A3 product.

#### Data gathering issues

EVAP has collaborated with the study team by coordinating the data contribution when requested. Therefore, we are surprised to see that this data gathering effort has not been reflected in the study. One specific example is cartridge yield data for BC2. The authors apparently used cartridge yield data from an unknown/unnamed source. This suggests the authors either don't understand the concept of a 'base case' (narrowly defined representative product, data is collected from manufacturers AND that data is used for the assessment/study) or they are discrediting OEM data that contradict the study considerations. The later would be a very clear expression of bias.

#### Policy options considerations

Throughout the study there are several considerations made, comparing criteria from ecolabels and Green Public Criteria guidelines with the proposals for the VA. It's important to highlight the difference in inherit logic between these instruments. While ecolabels and GPP are tools to differentiate the best performing products on the market based on their environmental performance, the VA objective, as a tool under the Ecodesign Directive, is to focus on removing the worst performing products from the market. The level of ambition of these instruments cannot be taken at an equal level, and criteria should not be transferred from one to the other.

Still EVAP welcomes the fact that most of the policy recommendation from Task 7 are already reflected in the current VA proposal, namely the following:

- Scope speed limit – This provision has been addressed in consultation with the EU Commission, to adjust speed limits to those defined in Energy Star.
- Innovation clause – The clause in paragraph 5.4 referring to limiting innovation has been deleted
- Cartridges in scope – After long debate (more than 18 months) with the EU Commission it was agreed that it was not possible to include cartridges in scope of the Voluntary Agreement due to the issues of market coverage and competitive limitations.
- Compliance information on products – The new VA will include provisions on the publication of a list of compliant products to the VA commitments.
- Primary energy requirement of imaging equipment products – The new VA proposed commitments on energy that are not too dissimilar to those proposed in the study.