



RIGHT TO REPAIR



Comments

on the proposed update to the industry voluntary agreement on imaging equipment

Brussels, 5 July 2021

We firmly reject the proposed update to the voluntary agreement on imaging equipment and expect the Commission to propose a dedicated regulatory measure without delay in line with the commitments set out in the Circular Economy Action Plan¹. Considering the critical number of major concerns related to the proposed update as well as the time taken by the signatories to put it forward, we strongly believe that no more time should be wasted on the flawed voluntary agreement and that the forthcoming Ecodesign Working Plan 2020-2024 must pave the way for a new, transformative regulatory instrument.

Short-lived printers and their consumables are responsible for a tremendous amount of e-waste, much of which continues to be landfilled or incinerated today. Our estimates show that out of over 650.000 tonnes of e-waste created, some 200.000 tonnes of end-of-life printers and cartridges are never properly recycled, and that just about 2% of materials are reused in new products. Urgent regulatory action is needed to address the short-lived, unrepairable designs of printers as well as the widespread commercial practices that prevent the reuse and remanufacture of printer consumables.

The proposed text of the VA fails to address the critical issues identified previously² and is unlikely to have any positive impact on the sustainability of printing devices. Endorsing the proposed update would therefore not only go entirely against the objectives of the European Green Deal³ and the forthcoming Sustainable Products Initiative but would also set the tone for the unacceptably low level of ambition for other products. The present paper contains an extensive list of concerns associated with the proposed VA by the environmental stakeholders.

¹ The Circular Economy Action Plan, adopted on 11 March 2020, committed to cover printers under the upcoming Ecodesign Working Plan 'unless the sector reaches an ambitious voluntary agreement within the next six months'

² See our comments on the previous version of the proposed voluntary agreement, dated December 2020: <https://www.coolproducts.eu/wp-content/uploads/2021/06/ECOS-eNGO-Comments-on-Imaging-Equipment-December-2020.pdf>

³ The European Green Deal sets out to, inter alia, 'curb built-in obsolescence of devices, in particular for electronics'

No meaningful commitments on printer consumables

With annual sales of some 70 million cartridges in France alone⁴ and remanufacturing rates of only about 10% in all of Europe, printer consumables are a major source of uncontrolled proliferation of electronic waste in the EU. The study undertaken to inform the revision of the voluntary agreement reveals that **printer consumables account for around 150.000 tonnes of e-waste per year, of which an equivalent to around 50.000 cars in weight, or around 68.000 tonnes, is either incinerated or landfilled today**⁵. Much of this is due to the widespread aggressive use of chips and firmware updates which creates a major hurdle for the reuse and remanufacture of printer consumables⁶.

The latest proposed update to the VA **fails to introduce any meaningful incentives for cartridge reuse and remanufacture**. Moreover, weaving together loophole upon loophole, the VA proposes to function by means of secretive bilateral agreements with a highly limited number of remanufacturing organisations. This is not only likely to impact but a small subset of the relevant economic operators in Europe with an unclear market share, but also raises serious concerns as to the permissibility of the practice under the EU's competition rules and the Ecodesign Directive. Endorsing the proposed VA which allows to effectively tie consumer to specific after-sales market is likely to not only negatively affect the affordability of products, but also the principles of fair competition.

Commitments on reuse, remanufacture & performance of printer cartridges

- **Restricted scope of relevant provisions (section 9.3 & Annex A):** the proposed VA commits OEM signatories to avoid using techniques that prevent printing with remanufactured and refilled cartridges but only makes the clause applicable to cartridges that use the 'original electronic circuitry'⁷ and which are remanufactured by the limited number of supporting signatories. Due to such unjustifiably restrictive definition of scope, the commitments on anti-reuse design features are unlikely to have any transformative impact on the market. Examples of cartridges are available on the market which do not contain electronic circuitry and these should equally be covered – and incentivised – by any measure dealing with printer consumables⁸.
- **Restricted applicability of relevant provisions (section 9.5 & Annex D-2):** provisions related to printer design are proposed to take effect by means of individual 'bilateral arrangements on commercially reasonable terms' between OEM manufacturers and supporting signatories (i.e. consumable remanufacturers). However, the proposed VA requires for bilateral agreements to be 'offered' – and not signed – with only 50% of existing supporting signatories (i.e. as little as 2 at present) and leaves complete discretion to the OEMs to determine the mechanisms or solutions through which such agreements would function. Worse still, it is considered sufficient

⁴ HOP, « Imprimantes : cas d'école d'obsolescence programmée ? Rapport d'enquête sur les enjeux et solutions en matière d'imprimantes et cartouches », 2017, p. 5, available at: <https://www.halteobsolescence.org/wp-content/uploads/2017/09/Rapport-HOP-1.pdf>

⁵ European Commission, 2019, Revision of Voluntary Agreement on Imaging Equipment Task 1-7 Final Report October-2019, available at: <https://www.review-imagingequipment.eu/documents>

⁶ The Recycler, August 2020, "Italy impose €10 million penalty on HP for deceptive and aggressive practices", available from <https://www.therecycler.com/posts/italy-impose-e10-million-penalty-on-hp-for-deceptive-and-aggressive-practices/>

⁷ Defined as circuitry 'that is unmodified or has been reset or replaced by or with the authorisation of the OEM'

⁸ See, e.g., the following products: <https://www.canon.co.uk/printers/maxify-gx7050/>, https://www.kyoceradocumentsolutions.ie/index/PRODUCTS_Refresh/ECOSYS_Refresh.html, <https://store.hp.com/UKStore/Merch/Product.aspx?id=5HX14A&opt=BHC&sel=PRN>, <https://www.epson.co.uk/home/ecotank>

for verification purposes if statements of no interest are obtained from supporting signatories, meaning that compliance with the VA would be possible even if no bilateral agreements are signed in practice.

- **Blanket exemption in case information is provided to consumer (section 9.4):** the VA specifies that it is acceptable for software and firmware updates to be designed to prevent printing with remanufactured or refilled cartridges or containers (including restricting cartridge acceptance, calibration and printhead cleaning) in cases where the printer's features, terms & conditions or contract specify that the customer is to use only OEM cartridges or containers. As a result, even in cases where the commitment on printer design were to apply, the VA could be circumvented by simply informing the consumer (e.g. by placing a sticker on external packaging or a dedicated section on the product website⁹) that they should use OEM cartridges only.
- **Blanket exemption for subscription and service models (section 9.2 & Annex D-2):** the VA proposes to exempt cartridges and containers sold under a subscription or service model from commitments aimed at promoting their remanufacture and recycling without any meaningful justification as to the reasons for such an exemption. Moreover, all that is required in terms of verification is for OEM signatories 'to identify the business models or programs excluded in the annual compliance report'.
- **Flawed cartridge and container reuse targets (section 9.10 & Annex J):** the VA introduces targets for end-of-life management of consumables which are unlikely to have any genuine impact on the remanufacturing market in Europe. By introducing a correction factor for the percentage of the market for remanufactured and refilled cartridges and containers participating in the VA, the proposed target will easily be met without any change to current unsustainable anti-reuse design practices. The currently proposed reuse rate of 40% by 2025 would be significantly overshoot even if the VA only covered 5% of the consumable manufacturing industry, which would in effect achieve no more than 10% of the actual reuse rate on the ground. Moreover, while other environmental initiatives such as EPEAT require manufacturers to report on the use of end-of-life options within their own cartridge and container take-back schemes, no such obligation is foreseen under the VA.
- **Inadequate commitment on page yield (section 9.8):** the VA does not introduce any meaningful commitment with regard to resource efficiency of printer consumables (i.e. pages printed per consumable), which are very much needed in order to increase their efficiency and to reduce their early replacement. The proposed section on page yield only refers to 'relevant ISO/IEC standards' and excludes cartridges that are supplied under product-as-service business models altogether. Compliance with the requirement is assumed upon simple reference to the manufacturer's website.

⁹ For examples of the practice see, e.g., <https://support.hp.com/gb-en/document/c05310148>

Flawed governance and insufficient market coverage

- **Unclear market coverage (section 1):** while the existing version of the voluntary agreement clearly states that the signatories shall provide “market coverage update after any change of signatory status”¹⁰, the market coverage data presented with the updated VA continues to predate the withdrawal of Samsung, Ricoh and Panasonic from the voluntary initiative back in 2017. Furthermore, the proposed VA does not provide any data on the collective market coverage of supporting signatories. This is contrary to the Commission’s guidelines on self-regulatory measures and means that the overall market coverage achieved by the SRI cannot be properly assessed¹¹. Counting only four remanufacturers among its supporting signatories at present, the VA is likely to concern only a small segment of the entire market for reused and remanufactured printer consumables in Europe and to fall well below the required 80% market share for a voluntary agreement to be recognised. While the European Toner and Inkjet Remanufacturers Association counts 36 members in total¹², only two of these members (i.e. as little as 5.6%) are listed as supporting signatories to the VA at present, indicating a clear failure of the initiative to attract a representative number of EU-based remanufacturers.
- **Failure to ensure sufficient transparency (section 9.5 & Annex D-2):** the updated VA proposes to establish bilateral agreements between its signatories in relation to the objectives of the self-regulatory measure. Contrary to Commission’s guidelines on self-regulatory measures which require that any documents relating to agreements signed under the VA be made publicly available¹³, the VA does not foresee for the publication of these agreements and thus precludes any possibility for outside scrutiny.
- **Discriminatory voting rules (section 14):** the previously existing equal voting rights among signatories have been replaced with a procedure to establish a subcommittee to arrive at a decision in case of disagreement, for which it is specified that there will be 5 OEM signatories and 5 supporting signatories. Considering that only 4 remanufacturers are currently signatories to the proposed VA, this would mean that the OEMs would in the foreseeable future always have a majority in case of disagreement. While the voting rules present the possibility of resorting to the use of mediator in cases of persistent disagreement, any recommendations made by the group established for the purpose of achieving consensus are subsequently to be sent back to the OEM-dominated steering committee for approval.
- **Restrictive time-period for new supporting signatories to join the VA (section 3.2.4):** while previously applications to join the SRI were accepted throughout the year, the proposed update to the VA proposes to limit the time period during which applications by companies wishing to join the SRI can be submitted to four months only. Such a restriction is in clear conflict with the Commission’s guidelines on self-regulatory measures, which specify that companies should be able to join the self-regulatory measure at ‘at any time’¹⁴.

¹⁰ Section 10.3, Industry Voluntary Agreement to Improve the Environmental Performance of Imaging Equipment placed on the EU Market, 2015

¹¹ Section 3.2 of Commission Recommendation (EU) 2016/2125 of 30 November 2016 on guidelines for self-regulation measures concluded by industry under Directive 2009/125/EC of the European Parliament and of the Council

¹² See <https://www.etira.org/members/>

¹³ See Section 3.2 of Commission Recommendation (EU) 2016/2125

¹⁴ See Section 3.1 of Commission Recommendation (EU) 2016/2125

Insufficient commitments on energy & material efficiency

Significant environmental impacts are associated with the imaging equipment sold on the EU market. These impacts stem from the resources used to manufacture printing devices, the energy used to run them and the impacts of these products at their end of life. Some 80% of printers are known to be replaced within the first three years after purchase today, and the product group overall is notoriously famous for planned and premature obsolescence¹⁵. Measures are urgently needed to extend the useful lifetime of printers and to ensure that printing devices can be easily repaired whenever broken.

The proposed commitments on energy and material efficiency are **neither comprehensive nor ambitious enough to address the detrimental environmental effects arising from printer manufacturing, use and disposal**. Marred with loopholes and vulnerable to abuse, they are, moreover, a far cry from matching the level of ambition of the existing ecodesign measures.

Energy efficiency

- **Insufficient energy efficiency requirements (section 6.1.1)**: there is insufficient justification for the proposed staged compliance targets which only require 95% of OM and 90% of TEC products to reach energy efficiency targets. Any regulatory instrument in relation to printers should be designed to cover 100% of both OM and TEC products placed on the EU market over time. Moreover, internal power supply efficiency requirements should be introduced in line with the recommendations of the review study.

Repairability

- **Blanket exemption from repairability rules (section 7.4.6 & Annex D-2)**: the proposed repairability provisions are proposed not to apply for products below 300 Euro price mark. Such exclusion not only openly defies the existing ecodesign rules for other product categories and other existing environmental initiatives such as EPEAT, but also effectively legitimises the continuation of short-lived, disposable printers on the EU market. Moreover, while the whole unit exchange model is suggested to lead to 'appropriate reuse of parts', the only verification evidence necessary for the purpose is a general policy statement in a document, without any commitment or verification on the replacement product itself.
- **Inadequate disassembly rules (sections 7.2, 7.3 and 7.4)**: contrary to the existing ecodesign regulations, the proposed VA does not require for all the components identified as relevant spare parts to be made easy to disassemble with commonly available tools without causing permanent damage to the device, including through a restriction on the use of fasteners for joining components. Instead, only a highly limited number of components is proposed to be subjected to disassembly requirements, some of which (e.g. displays and capacitors) are defined in a way which would further exclude large numbers of these parts from the obligation. Furthermore, the disassembly rules are phrased in a way so to address connections between materials rather than parts, and allow for exemptions in cases where this is 'technically required' or is 'necessary to ensure the safety of the product concerned' – without specifying how this is to be justified in practice and thus opening the door to possible abuse.

¹⁵ HOP, « Imprimantes : cas d'école d'obsolescence programmée ? Rapport d'enquête sur les enjeux et solutions en matière d'imprimantes et cartouches », 2017, available at: <https://www.halteobsolescence.org/wp-content/uploads/2017/09/Rapport-HOP-1.pdf>

- **Insufficient list of spare parts (section 7.4.2):** the proposed VA no longer includes maintenance kits in the list of spare parts which were proposed to be included in the previous draft submitted to the Consultation Forum in 2019. Moreover, the list does not comprise additional components which are well-known causes of printer failures according to independent repairers. This includes, notably, motors, gears, printer memory (RAM), batteries (if present), electronic displays, density sensors, power and control circuit boards, cartridges/container attachment components (including recalibration chips), ink collection units, hinges as well as spare parts for non-printer functions in multi-functional devices including scanner parts.
- **Restricted spare part delivery obligation (sections 7.4.1 & 7.4.5):** the proposed 18-month delay in application of the spare part availability requirement will significantly impact the numbers of products covered and is not justified. Moreover, a delivery time of 15 working days is entirely unjustified and is likely to create significant barriers to repair, given that the vast majority of new products are delivered in less than 15 days. The general business practice of delivering parts in 3-5 working days would be reasonable and sufficient.

Recyclability & toxicity

- **Insufficient requirements on polymer composition (section 7.6):** OM printers are proposed to be excluded from all the requirements related to polymer composition without justification. Furthermore, no limitation is introduced as regards the use of coatings – just a recommendation that these be ‘reduced to a minimum’.
- **No restriction on the use of halogenated polymers and organic compounds (section 7.6):** contrary to the existing ecodesign rules for electronic displays, the VA does not include any restriction on the use of halogenated flame retardants or other additives in printer enclosures in order to facilitate their recycling.
- **No commitment on the use of post-consumer recycled plastic (section 7.7):** contrary to the aims of the Circular Economy Action Plan, the proposed VA does not propose any targets for recycled plastic content in printer products, only a commitment to provide information to consumers on such content if present. A regulatory instrument addressing imaging equipment should introduce a quota of post-consumer recycled plastic content, as already required by some of the existing Type I ecolabels¹⁶. Evidence from US-based initiatives shows that almost a thousand products registered with the scheme already include between 5 and 10% of post-consumer recycled plastic, thus demonstrating the feasibility of such a requirement¹⁷.
- **No commitment on substance emissions:** the proposed VA does not contain any commitments on the emission rate by the imaging equipment of such substances as volatile organic compounds, particulate matter, benzene, styrene, ozone or dust, nor on the content of hazardous substances of consumables, which goes counter to the aims of the Circular Economy Action Plan to reduce the hazardousness of consumer products.

¹⁶ See, for example, the German Blue Angel Label (DE-UZ205)

¹⁷ See evidence from the EPEAT scheme, for instance: <https://epeat.net/search-imaging-equipment>

Flawed verification of compliance procedures

In addition to the above, the approaches to verification and compliance in the proposed VA are, too, severely inadequate:

- **Flawed verification of compliance (section 10.1 & Annex B):** the verification testing by the independent inspector is only permitted for the verification of compliance with the energy efficiency requirements under the proposed VA, thereby excluding any testing to establish compliance with requirements related to material efficiency. The proposed method for calculating the compliance rate, correspondingly, only takes into account ENERGY STAR energy efficiency requirements. This is entirely unjustified and contrary to the Commission's guidelines on self-regulatory measures which specify that compliance should be established with regard to 'all the commitments undertaken in the measure'¹⁸.
- **Inappropriate verification of compliance with material efficiency requirements (Annex D-2):** The proposed method for verifying compliance with material efficiency commitments is achieved by means of a simple reference to a "GEN type" ecolabel, by providing links to manufacturer websites, or by submitting corresponding declarations. This means that compliance is proposed to be established even if no genuine third-party verification of the credibility of submitted claims ever takes place.
- **Insufficient transparency (Annex G):** The list of product information that is proposed to be made publicly available does not include information related to material efficiency requirements. This is entirely unjustified, and will result in significant gaps in transparency with regard to implementation.

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¹⁸ See Section 3.5 of Commission Recommendation (EU) 2016/2125