

## **CISPE Response to the Public consultation on Ecodesign requirements on enterprise servers and data storage products**

*Context: Proposed Commission Regulation to implement Directive 2009/125/EC with regard to Ecodesign requirements for servers and data storage products*

### **CISPE's commitment to Ecodesign**

CISPE (Cloud Infrastructure Services Providers in Europe), the primary European trade association representing cloud infrastructure providers, supports the proposal to bring servers and data storage products within the legal framework of the EU Ecodesign Directive, and the Commission's work to define the appropriate scope of the draft Regulation.

CISPE members are committed to implementing all energy and non-energy Ecodesign requirements but caution the Commission against the potentially unintended effect of the information disclosure requirement for Original Device Manufacturer Direct (ODM Direct) in the current draft Regulation.

Market forces in the Original Device Manufacturer Direct (ODM Direct) segment are already driving cutting-edge Ecodesign innovations in customised servers. They offer superior performance and functionality at equal or higher energy efficiency to similar mass-produced servers and data storage products. This is the result of many years of innovation efforts and R&D investments to improve ODM products.

Forcing cloud infrastructure providers to publicly disclose certain technical characteristics of their custom-made server design puts at risk the R&D investments of innovation-driven cloud infrastructure providers, without contributing to any of the goals of the legislation.

Specifically, the information disclosure proposals in paragraphs 3.1, 3.2 and 3.3 of Annex II to the draft Regulation threaten to substantially undermine the progress achieved in terms of performance and functionality at equal or higher energy efficiency rates, by decreasing the competitive incentives that drive cloud infrastructure providers to innovate in server and data storage efficiency.

### **Limited disclosure of proprietary specifications**

CISPE respectfully proposes that a specific, limited segment of the cloud infrastructure market be exempt from such information disclosure requirements for reasons summarised below. The information disclosure exemption will not affect the segment's requirement to comply with the energy and non-energy related requirements established in the draft implementing measure.

CISPE's proposed changes to the draft Regulation giving effect to this exception are set out in the attached [Annex 1](#).

CISPE also proposes that a Frequently Asked Questions ("FAQ") section be included within the relevant Commission guidance on the Regulation, which provides clarity on the proposed changes to the draft Regulation, as set out in the attached [Annex 2](#).

### **Market Specificity of Original Device Manufacturer Direct (ODM Direct)**

Within the server and data storage products market, there is an important distinction between:

1. Mass-produced servers and data storage products that are offered for general sale by the manufacturer to business and consumer end-users (which may be subject to some post-production configuration by the end-user); and

2. Servers and data storage products that are custom-made to order by a manufacturer in accordance with a design specified by a cloud infrastructure service provider, for installation in the cloud service provider's own data centre (commonly referred to as the "ODM Direct" market segment<sup>1</sup>.

### Information Disclosure will be Counterproductive in the ODM Direct Segment

**The ODM Direct market segment is a segment in which it is not necessary to mandate the provision of Ecodesign product information to achieve the objectives of the Ecodesign Directive and the draft Regulation as the only end-user who requires that information already has it and has to comply with all the Ecodesign requirements.**

- The ODM Direct market segment represents only a small portion of the server market: 12.6% in the EMEA region according to 2017 data published by IDC.<sup>2</sup>
- The ODM Direct market segment has several important features that distinguish it from the rest of the server market:
  - The customer/end-user (i.e. a data centre operator/cloud services provider) is a sophisticated buyer with expert technical knowledge of the servers and data storage products they procure, including information about their energy efficiency, power demand, repair, disassembly and recycling/disposal.
  - The customer/end-user specifies the design of the equipment before the stage of manufacture and such design must comply with any applicable Ecodesign requirements of the Regulation. This level of customisation goes beyond mere post-production configuration by the customer, which is typical in the wider server and data storage products market.
  - The customer/end-user procures the equipment exclusively for its own use, i.e. as an input to providing data storage/cloud services to its customers. It therefore manages the full lifecycle of the equipment, including installation, operation, maintenance and repair, disassembly and recycling and end of life.
- In light of these characteristics, there is no Ecodesign policy objective that justifies requiring the manufacturers of such servers and data storage products to provide Ecodesign product information on free access websites since the only end-user who requires that information already is already in possession of this information.

**Cutting edge innovation in Ecodesign is already deeply engrained in the ODM Direct market segment. Requiring manufacturers within the market segment to publish Ecodesign product information will create a disincentive to investment in innovation to improve the energy efficiency of servers and data storage products.**

- Data centre operators are market leaders in driving energy efficiency improvements in servers and data storage products through investment in Ecodesign innovation; improving energy efficiency is critical to lowering operational costs and achieving a competitive advantage – even fractional improvements in energy efficiency can achieve huge reductions in power consumption costs.
- Server designs (including Ecodesign elements) have significant intellectual property value to data centre operators. Maintaining confidentiality in that IP is essential to protecting the investment made by the operator to achieve energy efficiency improvements.

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<sup>1</sup> International Data Corporation (IDC)

<sup>2</sup> <https://www.idc.com/getdoc.jsp?containerId=prEMEA43167517>

If data centre operators were mandated by the Regulation to disclose valuable Ecodesign IP on public websites (when actually there is no one else who needs that information), the design is likely to be copied by competitors, thereby eliminating any competitive advantage gained by their investment in achieving superior performance and functionality at equal or higher energy efficiency over similar mass-produced servers and data storage products.

## About CISPE

CISPE (Cloud Infrastructure Services Providers in Europe) is the primary European trade association representing over 25 cloud infrastructure providers operating in Europe. They are headquartered in over 15 different Member States and collectively have nearly 100 cloud infrastructure services declared under the CISPE Code of Conduct used by millions of businesses across Europe. Further information about CISPE can be found at <https://cispe.cloud/>

## Annex I: Proposed Amendments to draft Regulation

### Text proposed by Commission

### Amendments proposed by CISPE

#### Amendment 1

#### Exception for custom made servers and data storage products

##### Annex II, paragraph 3

3.1 From 1 January 2019, the following product information on servers shall be provided in the instruction manuals for installers and end-users, and on the free access websites of manufacturers, their authorised representatives and importers:

...

3.2 From 1 January 2019, the following product information on data storage products shall be provided in the instruction manuals for installers and end-users, and on the free access websites of manufacturers, their authorised representatives and importers:

...

3.3 From 1 January 2019, the following product information on servers and data storage products shall be made available free of charge by manufacturers, their authorised representatives and importers to third parties dealing with maintenance, repair, reuse and upgrading of servers (including brokers, spare

3.1 From 1 March 2020, ***with the exception of custom made servers, made on a one-off basis***, the following product information on servers shall be provided in the instruction manuals for installers and end-users, and on the free access websites of manufacturers, their authorised representatives and importers:

...

3.2 From 1 March 2020, ***with the exception of custom made data storage products, made on a one-off basis***, the following product information on data storage products shall be provided in the instruction manuals for installers and end-users, and on the free access websites of manufacturers, their authorised representatives and importers:

...

3.3 From 1 March 2020, ***with the exception of custom made servers and data storage products, made on a one-off basis***, the following product information on servers and data storage products shall be made available free of charge by manufacturers, their authorised representatives and importers to

parts repairer, spare parts provider and third party maintenance) upon registration by the interested third party on a website provided: third parties dealing with maintenance, repair, reuse and upgrading of servers (including brokers, spare parts repairer, spare parts provider and third party maintenance) upon registration by the interested third party on a website provided:

### Explanation

An exception to the paragraph 3, Annex II Ecodesign product information requirements, as proposed above, would exclude from the scope of paragraphs 3.1 to 3.3 servers and data storage products falling within the ODM Direct market segment for the reasons given above (whereas mass-produced servers and data storage products would not fall within the proposed exception).

- CISPE considers that such an exception is reasonable and justified having regard to the underlying objectives of the Annex II Ecodesign product information requirements and the justification provided above.
- This proposed amendment and interpretation is supported by a proposed new definition of “custom made servers, made on a one-off basis” (see Amendment 2 below).

### Amendment 2

#### Definition of “custom made servers, made on a one-off basis”

##### Annex I, new definition

New definition to be inserted in Annex I for the purposes of amended paragraph 3.1, Annex II:

***(x) ‘custom made servers, made on a one-off basis’ includes servers that are custom-manufactured to order in accordance with a design specified by a data centre operator and intended for sole use by such data centre operator in providing data storage services, and ‘custom made data storage products, made on a one-off basis’ shall be construed accordingly.***

### Explanation

- This proposed new definition supports the proposed amendments to paragraph 3, Annex II (see Amendment 1 above).
- Whilst the concepts of “custom-made” and “one-off” products appear in certain other Ecodesign Directive implementing regulations, there is no prescriptive definition of precisely what products they cover.
- CISPE therefore proposes the insertion of a definition of “custom-made servers, made on a one-off basis” to clarify that servers and data storage products falling within the ODM Direct market segment are covered by the exception which CISPE proposes in relation to paragraph 3, Annex II.

## **Annex 2: Proposed FAQ for Commission guidance**

By way of additional amendment (or alternative amendment if the Commission is not minded to include a definition in the Regulation as per Amendment 1 in Annex 1 above), CISPE proposes that a Frequently Asked Question (“FAQ”) be included within the relevant Commission guidance on the Regulation which provides further explanation as to the scope of the term “custom-made servers, made on a one-off basis”, as follows:

*Are ODM Direct servers and data storage products in scope to Regulation (EU) [xxxx/xxxx]?*

*Yes, but manufacturers of ODM Direct servers and data storage products are not subject to the Ecodesign product information requirements in paragraphs 3.1 to 3.3 of Annex II of Regulation (EU) [xxxx/xxxx].*

*The term ‘ODM Direct’ generally refers to servers and data storage products that are custom-manufactured to order in accordance with a design specified by a data centre operator and intended for sole use by such data centre operator in providing data storage services.*

*There is no general exception under Regulation (EU) [xxxx/xxxx] in respect of ODM Direct servers and data storage products. However, this equipment meets the definition of ‘custom-made servers, made on a one-off basis’ and, therefore, manufacturers are exempt from the obligations in paragraphs 3.1, 3.2 and 3.3 of Annex II to provide certain Ecodesign product information to installers, end-users and on free access websites.*

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