

Code of good practice for self- and co-regulation DRAFT (20 February 2012)

Background

In its 2011 CSR communication, the European Commission committed to “launch a process in 2012 with enterprises and other stakeholders to develop a code of good practice for self- and co-regulation exercises”.

Self- and co-regulation at EU level take many forms (see EU database maintained by the EESC and based on the work provided by the European Commission¹). A preliminary analysis of past and current cases points at a number of conditions, structures and processes which largely determine failure or success².

Success is defined as the capacity to:

- secure broad support among interested parties for the intended outcome of any initiative;
- set up and revise effective rules more quickly (speed and adaptability);
- set clear performance indicators, shared with interested parties, reporting on performance and take account of feedback in further improving delivery;
- make available the full body of knowledge (goal, process, outcomes) in order to drive better policy making and better regulatory impact assessment in the given field of action.

Design requirements:

1. Conception phase

1.1. Openness of participation

The rules must be drawn up in a concerted and collaborative way with all interested parties [for better design, legitimacy and trust].

1.2. Quantified and staged objectives / Added value in terms of general welfare

The objectives of the initiative must be set in clear and unambiguous terms, starting from a well-defined baseline. If the initiative covers a long time-span, interim targets must be included³. They must deliver added value (i.e. more than ‘business as usual’). The rules must contribute to the general interest (i.e. help meeting the objectives of the public authorities which might otherwise regulate – cf. sustainable development, etc). [for effectiveness].

1.3. Compliance and compatibility with existing legislation and policies

The initiative cannot contravene to competition rules in particular. It should not send contradictory signals to the signatories, i.e. be contrary to regulatory and market incentives put in place by the EU [for effectiveness].

¹ <http://www.eesc.europa.eu/?i=portal.fr.self-and-co-regulation-enter-the-database>

² Notes of the Secretariat General to the High Level Technical Group responsible for the implementation of the Inter-Institutional Agreement on Better Law-making (2003); Commission 2006 Advertising Roundtable (SANCO)

<http://www.aeforum.org/aeforum.nsf/ae932e24841cebdc802575d2005821da/640ab8f5a2f19bd1802571f8003f25ee?OpenDocument>; ENER and ENTR on the implementation of the 2009 ecodesign Directive (see Annex VIII of DIRECTIVE 2009/125/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products).

³ The objectives must be SMART (see Commission Impact Assessment Guidelines 2009)

1.4. Representativeness

The participants must represent a large majority of the relevant (economic) sector, with as few exceptions as possible [for effectiveness and efficiency].

1.5. Publicity

The initiative and its constitutive texts must be widely publicised, easily accessible (internet) and if possible free of charge [for legitimacy and trust]

2. Implementation

2.1. Iterative process

It is recognized that this is an iterative process and that "learning by doing" is important. Hence, the process should be initiated with a pilot, which shall provide the ground for further improvement.

2.2. Adequate financing

Types of financing that preserve the autonomy of the structures responsible for monitoring and enforcement (cf. pros and cons of private donations, fees, % of turnover, public credits). Level of financing matching the missions to be performed [for effectiveness and efficiency]

3. Monitoring and Reporting

3.1. Performance indicators

It must be possible to monitor compliance with objectives and (interim) targets in an affordable and credible way using clear and reliable indicators⁴.

3.2. Independent monitoring mechanisms

Self-regulatory initiatives must contain a well-designed monitoring system, with clearly identified responsibilities for the signatories / their representatives and independent inspectors. The independent inspectors should verify compliance with the rules and progress with objectives (possibly resorting to auditors). Alternatively or in addition, stakeholders including Member States, industry, environmental NGOs and consumers' associations should be invited to comment on auditing results

3.3. Reporting transparency

The auditing results must be publicised, including through the use of the Internet and other electronic means of disseminating information. The plan for monitoring and reporting must be detailed, transparent and objective.

4. Compliance

Clear definition of breaches and penalties

(to be developed) Pros and cons of "faming, shaming and blaming"; private fines; membership suspension or exclusion; judicial sanction for contractual breach; ... [for effectiveness]

⁴

The indicators must be RACER (see Commission Impact Assessment Guidelines 2009)