

Effective Open Voluntarism: Good design principles for self- and co-regulation and other multistakeholder actions

The Code

DRAFT (30 May 2012)

The signatory bodies and organisations of this code commit to apply it, in self- and co-regulation and other voluntary multistakeholder actions in which they may engage, and wherever they seek, in response to specific challenges, to achieve positive outcomes for society at large, and/or for their own stakeholders. They commit to mutual sharing of their overall experience of the application of the code and undertake to seek the broader application by other parties of the approach set out here.

To underpin a sustained effort in support of this vision, signatories will work with both organisations which have successfully led the way in this work and interested experts, to develop a cross-EU and multi-sectoral Network of Excellence, and to assemble, maintain and curate an on-line library of links to best practice literature and case studies. This will be done in partnership and synergy with existing initiatives and platforms¹.

This is an EU Code. As such it is fully open to all stakeholders engaged in self- and co-regulation and other multistakeholder voluntary actions in the EU. This applies to EU-headquartered companies as well as to non EU-based companies operating in the EU. In line with the *OECD guidelines*², EU-based companies are invited to follow this Code wherever in the world they engage in self- and co-regulation and in other multistakeholder voluntary actions.

As this is an EU code, it must comply with all relevant agreements and Treaty obligations. This means, for example, that self-regulatory measures by their very nature cannot:

- lead to restrictions on fundamental rights which are not already provided for by law (Article 52, Charter on Fundamental Rights);
- be applied “where fundamental rights or important political options are at stake” (Article 17, 2003 Interinstitutional Agreement).

This Code does not apply in the field of Social Dialogue

1. Conception

1.1. Openness

The initiative to open any such action can come from public or private actors, but must be open for ownership and participation at various levels by all concerned. This may include the involvement of public authorities, legislators, regulators and any interested parties from civil

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¹ <http://www.eesc.europa.eu/?i=portal.en.self-and-co-regulation#/boxTab0-2>

² OECD Guidelines for Multinational Enterprises; Recommendations for responsible business conduct in a global context. Adopted in May 2011. <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

society. Public authorities may not participate unless they undertake to either formally endorse or formally reject the outcome of the initiative.

Commentaire [x1]: The alternative is power without responsibility, where the public authority can use its political clout to achieve a particular goal and yet have no responsibility for any future failures. The inclusion of such a provision is absolutely essential for this process to be credible.

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The initial blueprint, or "concept agreement", for any action must be developed in a concerted and collaborative way involving open exchange with all interested parties. This must include the right of interested groups – registered consumer and citizen groups in particular – to formally register their disagreement with the approach, appending their detailed objections to the initial blueprint, if they see fit. The initiative and its constitutive texts must be widely publicised and easily accessible. The preservation of a similar degree of open governance in the operation of any resulting agreement is equally desirable.

1.2 Objectives

The objectives set out in any concept agreement should be clear and unambiguous, starting from a well-defined baseline.

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1.3. Representativeness

The participants should represent as large a proportion of actors in the field concerned, but at launch it may be that not all have come on board: the conditions for later engagement should be clearly stated by those launching the initiative. Public authorities should be ready to moderate discussions, on condition that they undertake to either formally endorse or formally reject the outcome of the initiative, that they are invited to participate by a majority of participants and that such participation is considered by a majority of participants on an ongoing basis to be helping the process Where any key stakeholder sector refuses to endorse the outcome, the statement of reasons for such a refusal should be appended to any self- or co-regulatory agreement that subsequently is published.

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1.4. Legal Compliance

The initiative must respect the law and may not be undertaken to restrict the appropriate application of the law. Actions defining standards may offer opportunities for competitive advantage, but cannot be pursued in such a way that it results in royalty-based standard, since that would to restrict competitors' access and moreover deprive different business models from access to the relevant market. Competition authorities and, where this is more effective, specialised regulatory agencies, should be consulted or involved to the extent necessary.

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1.5. Good Faith

All participants will be fully accountable and be respected for their role. It is recognized that participants of different sizes and types have different contributing capacities. The situation of SMEs shall be duly considered. Parties will demonstrate due diligence in bringing in the process the information deemed necessary to make the proper analysis of the situation available to all parties involved. Parties should ensure that their activities outside the action's scope are not inconsistent with the intent, spirit or impact of the action.

2. Implementation

2.1. Iterative process

An iterative process to allow the self- or co-regulatory agreement to address any unanticipated problems must be put in place. If the initiative covers a long time-span, interim targets must be included³. A sustained interaction between all parties involved is required.

2.2. Financing

Parties to any given action should commit to provide the means necessary to fulfil their own commitments. Public actors must support the participation of civil society organisations lacking fully adequate means themselves to play their appropriate role.

2.3. Monitoring

The plan for the monitoring of each actor's performance against their responsibilities must be detailed, transparent and objective. The monitoring must be sufficiently open and autonomous to command respect from all interested parties, and should make use of affordable, clear and reliable indicators. An "escape clause" must be included in any self- or co-regulatory agreement, whereby the resignation of either a stakeholder group or an agreed proportion of stakeholders will result in the automatic ending of the agreement.

2.4. Reporting

Reports of performance monitoring results are submitted by each actor for discussion by the participants as a whole, and are made public. The participants regularly and collectively assess not only their compliance with output commitments, but also any short-fall in expected collective impact and any desirable improvements.

2.5. Compliance

There shall be a system allowing complaints by non-participants and participants to be evaluated by independent assessors, with any panel comprising a majority of independent individuals. Evaluation results shall be made public. Non-compliance shall be subject to a graduated scale of penalties, with exclusion included, and without prejudice to any consequences of non-compliance under the terms of the Unfair Commercial Practices Directive. Any such agreement should include a level of non-compliance across the project as a whole which would result in the agreement being automatically terminated.

Commentaire [x2]: This suggestion is bordering on the absurd. Starting (too) quickly has no obvious benefits but obvious potential costs in terms of project planning, consultation, gathering relevant stakeholders, etc

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³ For SMART objectives see Commission Impact Assessment Guidelines 2009.