



Brussels, 18/12/2013
CNECT.

Subject: Summary operational report of the inaugural meeting of the Community of Practice (CoP) on Self- and Co-Regulation

Date: 10.12.2013, 09:30-16:30

On December 10, the Community of Practice on Self-and Co-Regulation got off to a good start.

More than 100 people actively participated in this first vibrant and fruitful meeting of the CoP, chaired by Robert Madelin, Director General of DG CONNECT. Stakeholders from various backgrounds and sectors paved the way for mature conversations in order to enhance their joint capacity to reach societal goals.

This summary operational report outlines the conclusions and next steps.

Introduction: Creating a European space to enable the building of a CoP around the emerging field of SR/CR

Robert Madelin (RM) (see [presentation](#)) welcomed the participants and reminded the background of the CoP initiative and its main objective i.e. to bring together “practitioners” of SR/CR in order to establish a network across Europe helping to better share successes, failures and lessons learned in this emerging field. He introduced the members of the Steering Committee, selected to keep the process honest and challenging, and encouraged participants to engage with them, EC colleagues and himself, both during the day, and in the follow up. He stressed that this endeavour was not DG CONNECT-specific but can be seen as a piece of social capital building by the Commission as a whole.

He then started his introduction by a metaphor, explaining that we moved from a governance based on books and papers where you can clearly distinguish regulated area from unregulated ones to a sort of “estuarine” situation where you never know if the kind of water you are trying to swim in is fresh water, salt water or somewhere in between.

With that in mind, there are three reasons why it is hard to make hard law in a democracy and achieve societal goals:

1. The Westphalian national “frontiers-driven mode of operation” is no longer an accurate description of how our world operates: it has been transposed into a transnational neo-pluralism in which one doesn’t know who has the power which is not only not held by governments, not even in tripartite institutes it is also not held within determined boundaries;
2. Technology is changing a lot of things in ways we can no longer quite get our hands around: boundaries are being blurred by technology. Everything is driven

by data and interacts in ways it wasn't in the past. Consequently the old familiar approaches to contract law or consumer rights for example don't work so well.

3. Life is getting more uncertain: What does it mean to be hyperconnected, is this a hyper-connected age? Does it mean that as individuals our ability to control is diminished? Does it mean that we don't know when we're being advertised to or on what basis? Do we get, when learning online, the same sort of quality and scientifically approved information that when we are at school?

For some this is wonderful but not for all. This leads to the issue of how a society responds to challenges: mature democracies are not good at organising dialogues and the problem is increased when trying to deal with "ill-understood" realities. Dialogue alone won't work if science is not properly harnessed, including behavioural science. But in the absence of dialogue, demonization of the other parties appears and hard law seems the only way out. However, the question here is not if there is a need for more space for laws and judges and less for SR/CR. That is something that needs to be decided by each society, at each moment, in each specific context. This is not an "either/or" question, but is a "both/and" question. The debates must be around **how to know what the appropriate tool/approach** is and one of the CoP objectives is to better inform that philosophical/political case by case choice, by understanding what makes any given effort of SR/CR effective.

RM then explained that the Principles can be summarized in the following points:

- Gathering together, at the stage of deciding what is going to be done, all the people who own the problem i.e. not only those who cause it, but also those who want it fixed.
- Whatever has been agreed to be done, real accountability is key and has to be "fit for purpose" in each given context, i.e. not so expensive it can't be done, but sufficiently objective and resourced so that the community which sets the goal trusts the results that come out of the monitoring process. There has to be measurement and reporting.
- The third big pitfall of any SR/CR is to plan for a 100% success, then fail, and then give up. Upfront recognition that people will underperform and that they will do better has consequently to be built in the process.
- Finally if there is a public interest, the benchmarks against which to work have to be such that they validate the public interest as part of accountability, goal setting and "continuous improvement".

RM concluded by stating that everyone will have personal views to what's "the right mix", for law, non-law and no-rules. As different people like different mixes, there may not be in different sectors or over time a one-size-fits-all solution, but what is crucial is to look at the different mixes that are working in different countries, in different sectors, and see what lessons can be learned.

Panel 1: Taking stock of our shared knowledge

The aim of this panel was to take stock of the existing knowledge base related to SR/CR. Panelists were invited to present existing work already undertaken in the area, which could serve as basis for the CoP and open avenues for the future. Additional input would then be gathered from the audience in a general discussion.

Jean-Pierre Faure, from the European Economic and Social Committee, [presented](#) the Database on Self- and Co-Regulation Initiatives, its genealogy, its objectives, structure,

and current content. He briefly introduced the current developments, as a full revamping is taking place, mainly aimed at making it more admin-friendly and to easily feed more content. He presented the future design and announced that the re-launch, originally planned for this meeting, is now foreseen in January 2014.

In her [presentation](#), **Linda Senden** - Professor of European and International Public Law at the University of Utrecht - made observations on the importance of research and building a shared knowledge-base in order to achieve the CoP goals. She underlined the key elements for that, including understanding the concept and effects of SR/CR, connecting theory to practice, especially to balance effectiveness and legitimacy, for mutual learning, identifying good but also bad practices, and areas for improvement. She introduced the HiiL research project on ‘Transnational Private Regulation (TPR) - Constitutional Foundations and Governance Design’. This international research project looked into 11 empirical case studies on public-private transnational regulatory regimes, in different areas (legitimacy, effectiveness, enforcement & quality aspects and governance design). She presented the insights provided by the research, as well as some of the issues raised, including ensuring adequate dissemination and exchanges of findings and ensuring their translation into policy making. She described two examples linked to EU legislation, one qualified as top-down, more “conventional” with the public regulator organizing the process, in the area of data protection (CR mechanisms built in), and one with a more “bottom-up approach”, where a private regulator, IATA in the safety in civil aviation sector, took the lead and where rules were then adopted by the legislator, or how a soft internal law became a European-wide public standard. She insisted on the need for an adequate pooling of resources and also mentioned her interest in views on how to define whether an action is legitimate or not.

Discussion and conclusion

The knowledge base must be conceived as a mapped network of places where that knowledge exists, enabling CoP members to crowd stuff into it and debate about it. This mapping must, of course, cover data collection but also know-how, analytics and research including some of the harder societal impact networking research funded under Horizon 2020.

The first sources already gathered at the meeting include:

- The [EESC Database](#)
- The (future) ICT4Society platform (the project is foreseen to start in Feb 2014)
- The current [content](#) of the CoP (codes, experiences, papers and reports)
- [HiiL international research project](#)
- The Network of Excellence in [Internet Science](#), funded under FP7
- Bertelsmann Stiftung “Multi-stakeholders’ collaboration platform”
- Internet Co-regulation: European Law, Regulatory Governance and Legitimacy in Cyberspace [2011] Cambridge Uni. Press
- Internet Co-Regulation and Constitutionalism: Towards European Judicial Review [2012] International Review of Law, Computers and Technology Vol.26 No.2. pp.212-228.
- Net neutrality law Chapter 25 in ‘Research Handbook on EU Internet Law’ [2014] Savin & Trzaskowski, eds Edward Elgar
- Regulating Intermediary Liability and Network Neutrality [2012] Chapter 15, pp701-750 in ‘Telecommunications Law and Regulation’ (Oxford, 4th edition)
- Internet Law [2012] Oxford Bibliographies Online. Ed. Cathal Nolan. New York: Oxford University Press

- Andrea Renda's (CEPs/HiiL project) project on SR/CR schemes online self-evaluation tool
- Corporate Responsibility Code Book, [Deborah Leipziger](#): Evaluation of all corporate responsibility codes. Currently working on a third edition which will incorporate other voluntary initiatives.

All CoP members are now invited to start crowding sources in, and enrich the list in the [dedicated section](#) of the CoP platform's agora. Thanks to this work, our network of knowledge sources will start growing. We will then concentrate our activities on the geo-localisation of actors and expertise, in close coordination with EESC and the ICT4Society project, in order to develop the best possible comprehensive and searchable map, within an open, lively, interactive and practical information hub. All ideas and suggestions to organise and map the content are also more than welcome.

Panel 2: Mapping areas of current practices and potential areas for attention

The aim of this session was to map the areas of current practices and potential areas for attention. It was designed to be a "minestrone" as, when we get from theory to specific cases, we cannot cover everything at once, and the objective was to throw some ideas on the table as to what is interesting and get reactions from the floor to identify areas where, in the community, there were people who wanted to join forces and collaborate on those issues.

Four panelists were then invited to share their views about experiences of self- and co-regulatory actions they consider worth of interest.

Diana El Azar (Senior Director, Head of Media, Entertainment and Information Industries, World Economic Forum), introduced two examples of Self Regulation, one old, on the MPAA movies rating system and the second newer, on a health and safety related issues for textile manufacturers in Bangladesh. Regarding the first example, on the positive side, one can note the parent-centric approach, the fact that it exists for several decades now, and has evolved with time at the same time as societies have. On the negative side, she quoted the lack of transparency for the rating criterias. Regarding the second example on fire and building safety, it includes all local and international actors of the chain, with a strong governance system, and an implementation strategy. However it was not signed by North American companies. Diana then underlined the success factors from the WEF's own experience on intellectual property such as: the diversity of participants around the table, giving the same weight to all participants, allowing to grasp others' views notably through role plays, the iterative process, starting by defining societal rules on which all agree (for ex. protecting children), as well as the key point of the language and vocabulary used.

Dominic Lyle (Director General, European Association of Communications Agencies - EACA), [presented](#) the case of the advertising industry, one of the most scrutinised and criticised. He explained the story of the EASA's self-regulatory Charter signed in 2004, setting out 10 areas where they committed to improve the system. The objective was to create a common platform across Europe for running Self-Regulation, while allowing national diversity, improving coverage & accountability, and ensuring the Commission recognised that there was a commitment. He said that the round table on advertising self-regulation then brought industry and NGOs together, on issues such as obesity and alcohol. After very unproductive debates surrounded by negative vibes, the Roundtable

and the Platform for Obesity as well as the alcohol initiative brought big changes in terms of improving dialogue and better understanding of respective positions. He explained that the sector has now produced best practices in a very wide range of issues, and underlined that while some issues remain, and challenges are to be expected (in terms of coverage and in the digital area notably), the situation is now much improved. He explained that they have achieved a system that answers the vast majority of complaints that consumers have. It cannot exist without regulation, and it is important to see those two processes as complementary, and not inter-changeable.

Chris Marsden's [presentation](#) (Professor of Media Law at the University of Sussex) focused on internet regulation issues. He presented a 'Beaufort Scale' of co-regulation, the result of a study undertaken for DG CNECT in 2006-2008 on better SR/CR, to see the ways in which state interventions took place, from recognising to funding to auditing self and co-regulation. Examples were classified in a scale from self-regulation to pure regulation, from 1 to 11. He presented two books, 'Internet Co-regulation' (2011) covering a study of 25 self-regulation examples on the internet, the sequel 'Regulating Code' (2013) studying 'hard cases' where there is no SR/CR in place, because they are intractable areas. These include copyright (where it will be very hard for multi-stakeholders to come to an agreement), social networking and net neutrality. He also introduced a series of generic questions, such as: fundamental human rights (with co regulation or regulatory rather than self-regulation when discussing human rights concerns, such as privacy or freedom of expression), user generated self-regulation (especially with web 2.0, when people themselves flag offensive videos, for example) and the danger of "camouflage". He also mentioned the move towards "prosumer" law, and towards legislation in some areas such as net neutrality or filtering suicide sites. He concluded by underlining need of explicit and implicit rules for co-regulation.

In her [presentation](#), **Angela Mills Wade** (Executive Director, European Publishers Council) gave the example of self-regulation in the area of Online Behavioural Advertising, based on the general system put in place (i.e. the Charter mentioned by Dominic Lyle), which had been extended to cover the content of digital marketing and communication but not the techniques of targeting using cookies. The aim was to deal with privacy and consumer expectations as regards interest-based advertising (using anonymous data collected via cookies to create segments for targeting). She described the process, qualified as complicated, especially with new players unfamiliar with self-regulation and the established working methods of the Alliance. She explained that the approach was different from looking at content, but rather based on consumers' requirements to have some control about use of their data. Under the programme, all advertising online has to carry an icon which links through to the EU-wide "Your Online Choices" website where they can find information about how behavioural advertising works, further information about cookies and the steps to take to exert some control over data collection for OBA, and opt-out. An online information campaign to bring attention of consumers to the icon and website was rolling out in key markets. She described the various innovations of the process, including the auditing and monitoring of compliance, a B2B trust mark and a continuous process of improvement. Via a multi-stakeholder Round Table process, chaired by Robert Madelin throughout the development of the programme, feedback had been collected and changes made. Progress of coverage was being reported back to the European Commission and added that a review is foreseen for January 2015.

Discussion and conclusion

A lively debate then took place with the audience. Many issues were raised, including questions such as the importance to learn from failures and not only from good practices, the challenge of new technologies, the necessity not to “strangle” business, the link with competition policy, the issues of accountability, legitimacy and effectiveness, problems of (public) funding, which could take different forms, and the need for the CoP to see what evidence is good enough to provide a benchmark against which to have a more objective debate about whether SR/CR is actually contributing to the desired change.

This discussion led both to a list of:

1) Sectorial experiences

- Advertising
- Online advertising
- Motion pictures
- Textiles
- Internet
 - e-Commerce
 - Social media
- Market research
- Retail
- Food

2) Cross cutting issues:

- Relationship between SR/CR and CSR
- How do we measure impact in ways that is trustable?
- Can we target looking forward problems which could be worth trying to address through collective activities?
- Can guidance beyond the Principles be provided, that would help potential actors to decide whether worth investing in (offline and online)?
- Is formalising of SR/CR inevitable? Is it desirable?

The CoP members have now in the [dedicated section](#) of the CoP platform’s agora, the possibility to complete, elect and prioritise this menu of issues and sectors, to enable the SC to identify the priority work packages for the Community. The issues getting the majority votes will be the ones that will be discussed within open virtual working groups at a later stage.

Panel 3: Success and risk factors of self- and co- regulatory actions

This panel focused on success and risk factors of self- and co-regulatory actions. The four speakers were asked to introduce the discussion by sharing their views on the main success and risk factors of self- and co-regulatory actions.

Monique Goyens (Director General of BEUC, the European Consumers’ Organisation) explained that her motto is to “always give it a try” when BEUC receives a sound dialogue proposal. She underlined that what she feels is a shift in the attitude and mind-set, from both sides. If the market alone cannot deliver, then why not deal with a problem through SR/CR, but it must be accountable and enforced. Consumers want to be involved as long as the means are provided and that it is not just “cosmetic”. Success factors for her include industry commitment to make it work, and not only to escape legislation, and

resources devoted for rules to be defined and enforced. It also include for industry to have capacity to “keep ducks in a row” (i.e. control the members of federations, even the biggest ones). She also mentioned the question of feasibility at EU level and concluded by adding that if consumer organisations are on board, it will increase the initiative legitimacy.

Didier Huck (V.P. Public Affairs and Corporate Social Responsibility, Technicolor) [presented](#) Technicolor’s experience and lessons learnt in respect to their voluntary industry agreement on complex TV set-top-boxes regarding energy efficiency as an alternative to EU regulation. He described the 4 years’ process (from its beginning to the approval by the Commission), the parties involved (public authorities, the Commission, and the national authorities, NGOs – notably to contribute to setting the target, and all the B2B industry segments). The key advantage of this approach was to be able to implement an agreement that is progressive and flexible. He described the difficulties encountered, mainly because of the 3 business segments involved, with strong competition within each. He insisted on the importance of efforts on confidence, of competition issues, risk of actors jeopardizing the whole process, and the difficulties to find a satisfactory reporting system. He then highlighted that for them, it was easier to do at EU level than at national level, since this industry is a global player, and very sector-dependent.

Olivier Gray (Director General, European Advertising Standards Alliance) [described](#) EASA’s 20 years’ Journey in identifying and applying a best practice model for effective self-regulation and the lessons learnt thanks to many years of experience. He underlined the importance of identifying Best Practices involving different stakeholders, how EASA has been able to share these and ensure their transferability to other sectors. He mentioned that having a CoP also within your own organization is useful to ensure progress in reaching the targets, to better understand what SR/CR is, and when there is a role for it. He then went through the success and risk factors as well as learnings. The key elements mentioned include notably avoiding a “one-size-fits all” approach as well as ensuring consensus, having clear definitions, effective enforcement, meaningful proof points, engaging all players, measuring progress and building trust with partners.

Patrick von Braunmühl (Managing Director, Selbstregulierung Informationswirtschaft) made a [presentation](#) on the risks related to critics, both from the CSO/NGO world such as the issues of privatization of law or “camouflage” and from business including for example the fear of higher costs, competitive disadvantage or the lack of incentives. He then listed and illustrated by a series of examples the success factors notably credibility, proper implementation, independent control bodies, positive incentives to engage in an action etc. He suggested to improve the ecosystem and to create better incentives for companies to engage in voluntary processes of self- and co-regulation.

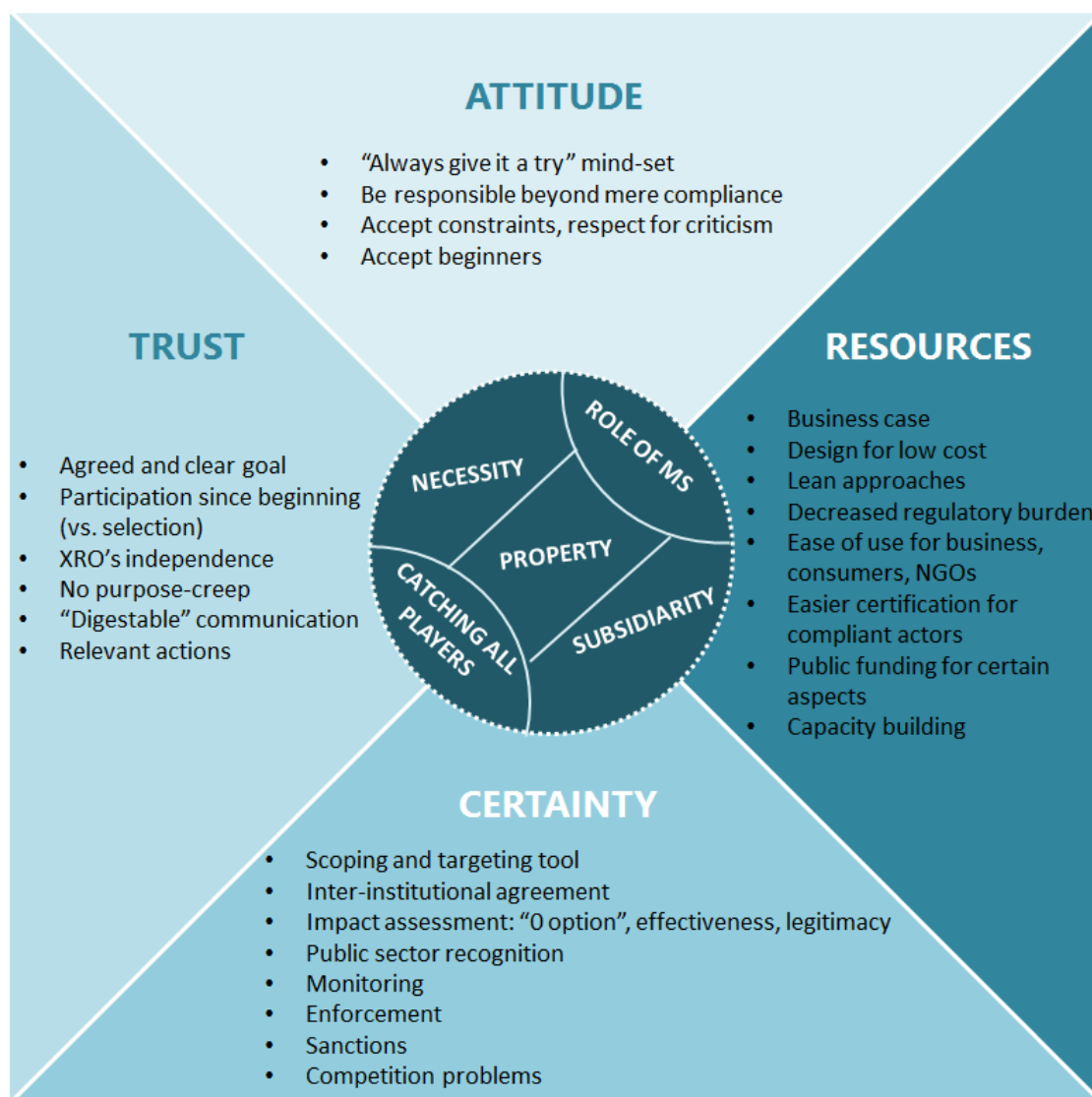
Discussion and conclusion

The floor was then invited to react and discussions took place on various issues such as the feasibility at EU level, the options when not all actors from a specific sector wish to follow, or when one actor is particularly difficult, the challenge to tailor approaches to different national markets, the issue of selection vs. participation, the necessary sanctions for non-compliance, how to prevent mission creep, etc.

The risk and success factors of self-and co-regulatory actions noted during the discussions can be summarised in four big themes: Attitude, Certainty, Trust and Resources, as represented in the figure below. An additional point was raised on top of these elements, namely the subsidiarity issue, as clearly some sectors have better

solutions at EU level, while other problems would be better dealt with in a network way, but at national level. Some of the elements are already covered by the Principles; some are new and seem to merit deeper attention.

To define the path of the CoP work in the next 12 months, members of the Community are welcome to confirm or add elements in the [dedicated section](#) of the CoP platform’s agora, with the comments facility.



CoP Governance

The light [Rules of Procedure](#) have been approved, and the [Steering Committee](#) composition confirmed.