

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

Meta Informations	
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User name	
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Profile of the Respondent	
Do you reply as:	on behalf of an organisation:
-single choice reply- (compulsory)	
Type of organisation:	research institute or think tank
-single choice reply- (compulsory)	
Name of organisation	
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What is the country of main establishment of your organisation?	UK - United Kingdom
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Consultation

1. Please comment on the draft code

There are two options to transmit your comments:

a: Fill in the text box below, or

b: Download the document, insert your comments in track changes and re-upload below

Download: Draft Code

-open reply- (optional)

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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

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

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.

This Code does not apply in the field of Social Dialogue

Comment [A1]: What does this mean? Is there a standard EU definition of "social dialogue"?

1. Conception

1.1. Openness

The initiative to start any such self/co-regulatory action can come from public or private actors, but should be open for ownership and participation at various levels by all concerned. It should be governed by clear membership rules. This may include the involvement of public authorities, legislators, regulators and any interested parties from civil society. The initial blueprint, or "concept agreement", for any action will be developed in a concerted and collaborative way involving open exchange with all interested parties. 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.

Parties should consider whether "concept agreement" requires access to IP rights: Are these rights available under FRAND principles/ pooled IP model? Or would collaboration create new IP?

1.2 Objectives

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

Parties to the concept agreement should consider whether optimal incentives for innovation to solve the marketplace problem exist in a competitive or collaborative scenario: Is price elasticity of market driving down quality and causing a 'race to the bottom'? Would collaboration enable systemic change and a 'race to the top'? At what level should competition or collaboration take place? E.g. R&D versus industry

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>

standards.

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 to the extent that this helps the process.

1.4. Legal Compliance

The initiative cannot contravene the law, nor 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 as to restrict competitors' access to the same potential advantage, and cannot be organized in such a way as to restrict access to the legitimate adoption of the standard.] As part of their due diligence parties may consult or involve Competition authorities and/or legal advisors to the extent necessary.

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 in bringing to the process the information deemed necessary to make the proper analysis of the current situation and desired change possible for all parties involved. If the information is price related and competitors are party to the agreement, third party data aggregation and exchange protocols/mechanisms should be put in place. 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

Initiatives will ideally aim for a quick start, quick accountability and an iterative process of "learning by

Comment [A2]: Great, but how will DG Comp respond if "open" agreement increases price of goods and services to the end consumer? Still insufficient guidance in this area.

Does DG Comp consider parties need to look at:

- Would agreement have impact on price, capacity or choice?
- What is level of market concentration and total market share of participants to prospective agreement?
- Does conceptualised agreement pass TFEU Articles 101(1) and (3) assessment?

doing". 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 may 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.

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. Wind-up provisions should be designed in from the start to ensure that collaborative behaviours come to an end.

Comment [A3]: Will need fuller explanation. SMEs don't have legal advisors! Would exclusion not put parties to agreement in breach of competition law?

2a. Are you interested to take part in

Yes

³

For SMART objectives see Commission Impact Assessment Guidelines 2009.

a network of excellence and community of practice of effective open voluntarism?

-single choice reply- (optional)

2b. Please indicate in the text box below any existing reference material or experience you consider useful to share within this network of excellence and community of practice, in terms of website, reports or events. Feel free to upload any relevant material.

-open reply- (optional)

Former Head of Public Affairs at Business in the Community; Course Leader in Business Ethics and Sustainability at the University of Bradford School of Management; and Founder of The Cooperation Incubator. A wide range of material on self/co-regulation is signposted in our "How to" guide published with Business in the Community and available on request as a Network of Excellence website is developed.

3. Please share your knowledge, ideas and opinions about how best to ensure that voluntarism receives its appropriate share of attention in the policy-making toolbox. How best can we address the grey area of self-regulation that are not quite as purely autonomous as the wording in the **2003 Inter-institutional Agreement** on better lawmaking implies, and yet has none of the characteristics required in that Agreement for a system to qualify as co-regulation, and how best to give a new momentum to self- and co-regulation and open voluntarism to ensure that they are duly considered and practiced when they appear to be the most efficient route to the societal benefits in point. This does NOT mean voluntarism should substitute for lawmaking and regulation in any systematic manner, rather making the best possible use of voluntarism is critical to a highly effective policy approach. Please use the text box below or upload any additional relevant material

-open reply- (optional)

1) DG Comp needs to give much clearer guidance and assurance to companies looking at progressive social/environmental agreements - key competition law issues highlighted in comments on draft code; 2) DG Comp should consider an EU level equivalent of the UK OFT/CMA's Short Form Opinion process; 3) The code should be followed up with additional narrative and explanatory text; and 4) A website should be established that supports the application of the framework so that there is a central platform for new agreements to be published in draft, commented on, published and monitored.