FoodDrinkEurope Response to the draft Code on "Effective Open Voluntarism: Good Design Principles for Self- and Co-Regulation and Other Multistakeholder Actions"

FoodDrinkEurope, representing the food and drink industries of the European Union, welcomes the opportunity to express our views on the draft Code. We fully support the need for good design principles for self- and co-Regulation and other multistakeholder actions and are very appreciative of the initiative which the commission is taking in this area.The topic is complex and FoodDrinkEurope would greatly appreciate the opportunity to continue to be involved in developing the thinking surrounding this which will need to continue after the end of the current consultation period.For example we feel it important to clarify the scope of the draft code; we would suggest that it could, for example apply to issues of transparency and greater involvement of stakeholders such as FoodDrinkEurope in the comitology process, the work of EFSA etc.

As for our detailed comments on the current draft code, please note the following:

1. Conception

Overall, the principles are comprehensive and logical

1.1 Openness
The word "ownership" needs further elaboration and clarification. It should be clear that the owner of the initiative must be the organisation responsible for carrying it out. The owner of a commitment cannot impose an action on another party without consent by the latter party.

1.3. Representativeness

Partners should be those with a legitimate stake in the issue, or in a significant part of the issue because it has the potential to impact on their interests or sphere of activity. Where they are representing a particular interest group their mandate from the group should be made clear and transparent

1.5 Good Faith
It should be incumbent on all partners to ensure that all information and views expressed or submitted by them as part of the establishment of a code of practice or set of guidelines is evidence based and supported by sound data rather than just opinions.

2. Implementation

2.1 Iterative process

Given the potential consequences of any such Code we have reservations as to whether "learning by doing" is the right approach. It is suggested that an initial in-depth investigation should be carried out as to the feasibility and consequences of such Codes before they are trialled or put into practice. Terminologies such as "long time-span" lack clarity and need further precision so as to avoid ambiguity

2.3 Monitoring

It is suggested to introduce the word "reproducible" here: *"The monitoring must be sufficiently open and autonomous to command respect from all interested parties, and should make use of affordable, clear, ~~and~~ reliable**, and reproducible** 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." It should be made clear to whom the reports have to be sent, which could be the European Commission or, as the case may be, national authorities.

2.5. Compliance

It is suggested to add the word "evidence-based": *"There shall be a system allowing **evidence-based** 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."*

Moreover, *"non-compliancy leading to a graduated scale of penalties"* needs further clarification. A document should be available to explain any penalties in detail. This document should be subject to approval by signing partners of this Code.

3. **General remarks**

It should be clear that voluntary approaches are implementing policy objectives. The Draft Code makes reference to the OECD Guidelines for Multinational Enterprises 2011 Edition[1]. It is worthwhile to compare the draft Code with Core Criteria for Functional Equivalence in the Activities of NCPs as established by OECD.

In addition the code could be enriched by including reference to and further consideration of the following points:

- Visibility: The need to ensure widespread promotion of voluntary codes to all stakeholders and not just to those instrumental in their creation. From a business perspective it is important to include consideration of SMEs as far as this is concerned.

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[1] http://www.oecd.org/investment/investmentpolicy/48004323.pdf

- Accessibility: Easy access to Codes is important to their effective functioning; too much administrative burden should be prevented;
- Transparency: Transparency is an important criterion, as is the concept of and limitations to the idea of openness. Where limitations as to which stakeholders can participate in the establishment of a code or agreement are imposed the nature of and reasons for such limitations must be clearly spelled out and justified. Where confidential data is supplied by partners in the course of drawing up a code or agreement there must be provision for respecting the confidentiality of such data where this is important from a competitive point of view.
- Accountability: Annual reports and regular meetings of partners of the Code should provide an opportunity to share experiences and encourage "best practices" with respect to such Codes.
- Role of authorities: This needs to be further specified
- Voluntary initiatives: Consideration of the applicability of these guidelines to bi-lateral agreements, such as B2B initiatives, should be given.
- Globalisation: Any process for the good design of Codes of Practice in the EU will inevitably have the potential to be picked up by other geographical regions/parts of the world. This should be considered from the start.