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ANNEX 1

ANNEX

to the

COMMISSION RECOMMENDATION

**on guidelines for self-regulation measures concluded by industry under Directive
2009/125/EC of the European Parliament and of the Council**

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1. OBJECTIVES

Self-regulation is where business or industry sectors formulate codes of conduct or operating constraints on their own initiative which they are responsible for enforcing. Pure self-regulation is uncommon and at Union level it generally involves the Commission in instigating or facilitating the drawing up of the self-regulation measure. In the context of Better Regulation¹ the Commission considers well-designed non-regulatory approaches as alternative policy solutions.

Directive 2009/125/EC of the European Parliament and of the Council² ('the Directive') provides for voluntary agreements or other self-regulation measures as an alternative to implementing regulations under its framework, prioritising them where they are likely to deliver the policy objectives faster or in a less costly manner than mandatory requirements³. The Directive provides indicative criteria for assessing self-regulation measures⁴, but, based on the experience with the three voluntary agreements recognised by the Commission so far⁵, the members of the Consultation Forum established by Article 18 of the Directive have pointed out the need for guidelines in relation to these criteria, in particular with regard to monitoring and reporting.

These Guidelines aim to make it easier to set up and implement self-regulation measures under the Directive. They are designed to assist industry and to facilitate a consistent implementation of self-regulation measures. They take into account the principles for better self- and co-regulation⁶.

Following these Guidelines will help to ensure that an ecodesign self-regulation measure will be considered by the Commission as a valid alternative to an implementing measure. For existing ecodesign self-regulation measures, the Commission should receive a proposal for revision of the measure aligned with the Guidelines as far as possible, at the latest in 2018.

2. RECOGNITION OF ECODESIGN SELF-REGULATION MEASURES

The Commission will give priority to self-regulation measures for product groups that are included in an ecodesign Working Plan foreseen in Article 16 of the Directive. Industry should provide the Commission with any proposal for a self-regulation measure for such product groups before or during the technical, environmental and economic analysis ('preparatory study') for the product group concerned.

Industry may be requested to amend the proposal to take account of any comments received from the Commission and the Consultation Forum.

If the Commission decides to recognise a self-regulation measure, it will refrain from adopting an ecodesign implementing regulation. If, however, monitoring of the self-regulation measure or feedback from stakeholders indicates flaws in the implementation of the self-regulation measure, the Commission will reassess the situation.

The recognition of a self-regulation measure does not prevent the Commission from adopting legislation under other policy instruments (e.g. Directive 2010/30/EU of the European

¹ Better regulation for better results - An EU agenda, COM(2015) 215

² 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 (OJ L 285, 31.10.2009, p. 10).

³ Cf. Recitals 18-21 and Articles 15(3)(b) and 17 of the Directive

⁴ Annex VIII of the Directive

⁵ COM(2012) 684, COM(2013) 23 and COM(2015) 178

⁶ <https://ec.europa.eu/digital-agenda/best-practice-principles-better-self-and-co-regulation>

Parliament and of the Council⁷, Regulation (EC) No 66/2010 of the European Parliament and of the Council⁸) for the product group in question.

3. GUIDELINES FOR ECODESIGN SELF-REGULATION MEASURES

Any ecodesign self-regulation measure concluded by industry should contain rules governing its operation. To ensure the homogeneity of self-regulation measures recognised under the Directive and to facilitate their establishment and implementation, self-regulation measures should follow the Guidelines set out below. A self-regulation measure may provide further rules in addition to those set out in the Guidelines, and may expand upon the rules as contained in the Guidelines.

3.1. Openness of Participation

Companies interested to establish a self-regulation measure should make a public announcement of their intention to do so before the process of developing the measure is started. They should provide a contact point, so as to give an opportunity for other companies to participate.

The self-regulation measure should contain a list of the companies who are signatories to the measure. Companies active in the same product market should be able, at any time, to join the self-regulation measure, on the condition that they participate in its operational costs. The membership form to be completed and signed by a company wishing to become a signatory should be attached to the self-regulation measure. The signatories should send to the Commission, without undue delay, the original completed and signed membership forms.

A signatory withdrawing from the self-regulation measure should give at least a month written notice to the Chair of the Steering Committee (see section 3.5). The Chair should inform the Steering Committee of the withdrawal of a signatory within a week of receipt of the written notice.

3.2. Added Value

Proposals for self-regulation measures or for revised versions of existing self-regulation measures should be accompanied by an explanatory note explaining how the proposal would meet the ecodesign objectives more quickly or at lesser expense than mandatory requirements, supported by evidence.

If some or all of the signatories have concluded a separate agreement or association of any kind in relation to the objectives of the self-regulation measure, all relevant documents relating to the agreement or the association should be mentioned and made publicly available.

The self-regulation measure should provide for a review of all the essential elements, indicating a date or specific circumstances that trigger the review. The timing of the review should be justified based on the need for the measure to (continue to) deliver added value, taking into account the stages of requirements included in the measure and the pace of technological development of the product group concerned.

The review should establish whether a new version of the measure is needed. The review and revision process should be open to participation of observers on the Steering Committee. The findings of the review process and, where relevant, the proposal for the revised self-regulation measure should be submitted to the Commission.

⁷ Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ L 153, 18.6.2010, p. 1).

⁸ Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

3.3. Representativeness

The self-regulation measure should state the market coverage of its signatories which should be at least 80% of units placed on the Union market and/or put into service⁹ of the type of products covered by the measure. The signatories should provide evidence, compiled or verified by an independent legal or natural person proving that the self-regulation measure has a market coverage of at least 80%. This should be sent to the Commission:

- when submitting a self-regulation measure or a revised version of an existing self-regulation measure, with the findings having been generated or updated within the previous six months;
- within three months of any change in the signatories (e.g. after the withdrawal of a signatory or after a relevant division of a signatory has been sold off to a non-signatory), unless the most recent report shows that the market coverage will remain at least 80% following the change; and
- two years after sending the latest report, to update coverage following changes in the market.

The self-regulation measure should define the precise indicator(s) used to assess the market coverage claimed. The indicators should be objective, measurable and verifiable by an independent body. The indicators should cover all energy-related product categories covered by the measure.

3.4. Quantified and staged objectives

The self-regulation measure should list all the types of products within its scope, provide definitions of these products, and list product types belonging to the product group falling within the scope of the self-regulation measure but exempt from its requirements. Justifications should be provided for any exemptions made.

The self-regulation measure should lay down design, and where appropriate, information requirements for the products within its scope. The requirements should relate to significant environmental impacts over the product life-cycle and aim at improving the environmental performance of the products.

It should be possible to measure compliance with the requirements using clear and reliable indicators. Details of how compliance is to be measured and verified should be provided. The self-regulation measure should provide documentation on which the proposed requirements are based. Any major differences between the proposed requirements and the documentation should be highlighted.

The requirements should be presented with a date of their application and if the self-regulation measure covers a long time-span it should include successive levels of requirements. The requirements should apply to at least 90% of all units (covered by the self-regulation measure) placed on the market and/or put into service by each signatory.

3.5. Involvement of civil society

The Consultation Forum, which includes Member States' representatives, industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations, should be consulted on any proposal for a self-regulation measure.

Steering Committee

⁹ The 'Blue Guide' on the implementation of EU product rules explains what 'making available' on the market and 'putting into service' mean (<http://ec.europa.eu/DocsRoom/documents/4942/>).

The self-regulation measure should establish a Steering Committee that will manage the operation of the measure.

The Steering Committee should consist of all signatories to the self-regulation measure and the Commission. Each of these should be represented by one member who all have equal voting rights.

Members of the Consultation Forum, and the Independent Inspector should have the status of observer to the Steering Committee, without voting rights.

The Steering Committee should meet at least once per year in Brussels. The meetings of the Steering Committee should be open to interested parties, including companies from the sector covered by the self-regulation measure that are not signatories to it.

The Steering Committee should elect a Chair from among its members. The Chair should include in the draft agenda for a Steering Committee meeting all points requested by the members and observers. Invitations to the Steering Committee meeting should be sent to all members and observers. An announcement of the Steering Committee meeting, including a draft agenda, should be published on the website of the self-regulation measure no later than one month before the meeting.

Documents to be presented and discussed at the Steering Committee meeting should be sent to all members and observers of the Steering Committee, and should be published on the website of the self-regulation measure no later than one week in advance of the meeting.

All participants should have a right to take the floor at the Steering Committee meetings and to request that the Chair record their views in the minutes.

The draft minutes should be sent to all members and observers of the Steering Committee and they should be given at least two weeks to submit comments on them. The final minutes should be published on the self-regulation measure's website within one month of the meeting.

Website

A website should be established for the self-regulation measure. The website should contain at least:

- the most recent and previous versions of the self-regulation measure;
- an up-to-date list of signatories and information on recent withdrawals and exclusions of signatories;
- summary versions of reports on the market coverage (without disclosure of individual signatories' commercial or confidential data);
- up-to-date lists of products declared compliant by the signatories (products found to be non-compliant by the Independent Inspector should not be included);
- the compliance reports produced by the Independent Inspector;
- an up-to-date list of non-compliant signatories;
- for every Steering Committee meeting: invitations, draft agendas, meeting documents and meeting minutes; and
- information on the Independent Inspector, including its contact details.

The website should allow visitors to submit questions about the self-regulation measure to the signatories and to the Independent Inspector. These should be replied to within one month.

Complaints

The self-regulation measure should ensure that any party can submit, free of charge, substantiated allegations of possible non-compliance to the Independent Inspector. The Independent Inspector should evaluate these allegations and, where appropriate, follow-up by requesting information from the signatory concerned, by testing and/or by an inspection. The Independent Inspector should at each Steering Committee meeting provide an overview of all allegations submitted since the last meeting and, if it has not investigated any of them, provide its reasons for this.

Access to data

The self-regulation measure should include a requirement that the signatories provide, upon request, the Commission and observers to the Steering Committee with access to technical data on the environmental performance of products and models covered by the measure, including all characteristics related to special conditions, to enable the Commission and observers to the Steering Committee to assess the level of ambition and the impacts of proposed and existing self-regulation measures. The rules on access to such data need not apply to commercially sensitive data.

The self-regulation measure should include a requirement that the signatories provide, upon request, market surveillance authorities of the Member States responsible for ecodesign with specific documentation and information, to the extent this is not included in the documentation supplied with the products, to enable them to verify compliance with the requirements of the self-regulation measure, including through testing.

3.6 Monitoring and reporting

Independent Inspector

An Independent Inspector should monitor compliance of signatories with the self-regulation measure. The self-regulation measure should state the rules that apply to the Independent Inspector, which can be a natural or legal person.

The Independent Inspector should have the necessary skills for verifying compliance with the requirements and be free of conflict of interest. The Independent Inspector's contractual obligations should not restrict its role in carrying out compliance verification.

The Independent Inspector should:

- perform its duties with due care and supervise adequately all tasks for which it is responsible;
- be impartial in all its activities, basing its opinions and reports solely on the facts; and
- respect confidentiality, where necessary, in order to protect the signatories' commercial interests or sensitive data and to this end sign a 'non-disclosure agreement' with the signatories to the self-regulation measure, if requested.

The self-regulation measure should lay down the procedure to select an Independent Inspector and how it will be ensured that the Inspector is free of conflict of interest and has the necessary skills for verifying compliance with the requirements. The appointment of the selected Independent Inspector is to be agreed with the Commission services. The Steering Committee should be involved in determining the terms and conditions of the contract of the Independent Inspector.

Compliance reporting by signatories

The self-regulation measure should lay down rules on at least the following aspects of the documentation to be submitted by each signatory to the Independent Inspector:

- the type of market and technical data to be reported;

- the format in which the data are to be submitted;
- the means by which documentation is to be sent; and
- the frequency and timing of the submission of documentation.

Each signatory should report all the information and data (including market data and data on the environmental performance of products) necessary for the Independent Inspector to reliably verify the signatory's compliance with all the commitments undertaken in the measure.

Signatories should provide market data allowing the Independent Inspector to establish whether at least 90% of their products comply with the commitments. If signatories commit to ensuring that 100% of their products comply with the commitments, they are not required to provide specific market data to the Independent Inspector.

Reporting should be carried out for every model covered by the self-regulation measure that is placed on the Union market and/or put into service. If the difference between certain models is not relevant to the self-regulation measure (i.e. it does not concern any aspect related to the requirements), reports may combine similar models, provided that this is indicated. The information and data reported by the signatories may differ only inasmuch as their respective commitments differ.

The format in which data are to be submitted to the Independent Inspector should be the same for all signatories.

The means should, as far as possible, take advantage of electronic means of communication, whilst taking account of confidentiality requirements and the administrative burden placed on all parties concerned.

The period to be reported on should be one year. Each signatory should every year provide the documentation within two months after the end of the reporting period. Additional requests made by the Independent Inspector for signatories to provide any missing information after the deadline should be honoured within a short deadline, to be specified in the self-regulation measure.

Compliance verification

The self-regulation measure should empower the Independent Inspector to verify compliance with the requirements of the self-regulation measure through:

- checking the documentation provided by signatories;
- testing products; and
- inspecting the signatories' premises.

The Independent Inspector should decide on an appropriate combination of these methods.

Testing

Testing concerns verifying the characteristics of products covered by the self-regulation measure by means of physical tests performed in a laboratory. As a general rule, this should be done in an independent laboratory, preferably an accredited one. As an alternative, testing activities may be performed on the premises of one of the signatories, provided that full objectivity can be guaranteed.

The Independent Inspector should select, at random, an adequate number of products from different signatories for testing, preferably acquiring them from retailers in different Member States (physical or online shops). If signatories provide the products directly, they should not be involved in selecting the samples.

The Independent Inspector may select specific models or select models from a specific signatory if information obtained from any source points to possible non-compliance of those models or that signatory.

The signatories should provide, on the request of the Independent Inspector, specific documentation and information required for the purpose of testing, if this is not included in the documentation supplied with the products.

The detailed test reports for each separate product tested should be provided to the Commission and to the signatory concerned.

Inspections

The Independent Inspector may carry out an inspection of a specific signatory on the basis of specific information justifying such an inspection. The specific information should be disclosed to the signatory concerned.

An inspection should only be used as a means of checking compliance with the commitments made under the self-regulation measure if no other more cost-effective means is available. During an inspection, the Independent Inspector should only carry out those activities that are strictly necessary for checking the compliance of the signatory with the commitments made under the self-regulation measure.

The Independent Inspector should not give the signatory advance warning of the inspection or only at short notice. The signatory should provide any support required.

The Independent Inspector should send a draft of the inspection report to the signatory concerned for comment within one month of the inspection. The signatory should submit its comments within two weeks of receiving the draft report. The Independent Inspector should, within two weeks, amend, if necessary, the draft report to take account of the comments received from the signatory. The report, including the reason for the inspection, should be provided to the Commission and to the signatory concerned. A summary should be presented at the first meeting of the Steering Committee held following the finalisation of the report. The summary should not disclose any commercially sensitive information, unless this is necessary to prove non-compliance.

Reporting by the Independent Inspector

The Independent Inspector should prepare the draft compliance report and send it to the members of the Steering Committee at the latest three months after the end of the reporting period. The members of the Steering Committee should be allowed two weeks to submit their comments on the report. The Independent Inspector should submit the final version of the compliance report to the Steering Committee at the latest four months after the end of the reporting period. The compliance report should include:

- information about the data collection and processing methods used and any difficulties encountered in preparing the report*;
- the results of document checking*;
- the approach for selecting products for testing and if specific models or signatories were targeted, the reasons for doing so*;
- a list of products tested and a summary of the individual results;
- summaries of any inspections carried out during the reporting period;
- a list of non-compliant signatories;
- information about the reasons for any non-compliance*; and

- recommendations for future reporting periods.

The self-regulation measure may specify that the items indicated with an asterisk (*) should be presented in aggregated form summarising the results for all the signatories combined and not include individual signatories' commercial or confidential data. In such cases, individual reports containing the specific information separately for each signatory concerning those items should be provided to the Commission and to the signatory concerned.

Non-compliance

Non-compliance should be subject to a graduated scale of sanctions.

A signatory failing to report its compliance report to the Independent Inspector should be subject to an inspection by the Independent Inspector in the year following the reporting period concerned. A repeated failure to report compliance documentation should lead to immediate exclusion of the signatory from the self-regulation measure.

A signatory that, according to the Independent Inspector's inspection or compliance report, has not complied with the requirements of the self-regulation measure should be required to take corrective action. Non-compliance that continues for more than six months after the report by the Independent Inspector should lead to immediate exclusion of the signatory from the self-regulation measure.

The Chair should inform the Steering Committee in writing of the exclusion of any non-compliant signatory within one week of receiving information from the Independent Inspector that a condition for immediate exclusion has been met.

3.7 Cost-effectiveness of administering a self-regulatory initiative

The signatories should bear all expenses related to the Independent Inspector and its activities, the website and the operation of the Steering Committee, except for the costs of participation of the representative of the Commission and the observers other than the Independent Inspector.

The self-regulation measure should encourage the signatories to share expertise, experience, information and best practice with signatories to other ecodesign self-regulation measures.

3.8 Sustainability

The self-regulation measure should state its policy objectives. These should be consistent with the policy objectives of the Directive.

3.9 Incentive compatibility

The proposed self-regulation measure should be consistent with other factors and incentives at national level.