

TOOL #18. THE CHOICE OF POLICY INSTRUMENTS

1. INTRODUCTION

A range of regulatory and non-regulatory instruments or combinations of instruments may be used to reach the objectives of the intervention. The merits of each alternative should be considered rigorously taking into account the following:

Action at Union level is governed by the **proportionality principle** which means that action should not go beyond what is necessary to achieve the objective. Proportionality is about matching the policy intervention to the size and nature of the identified problem and its EU (subsidiarity) dimension in particular¹⁴³;

The choice of instrument should take into account the experience obtained from the **evaluation of the existing policy framework** as an initiative is often not starting from scratch. For example, an evaluation may find that a voluntary approach has not been effective so this choice is likely to be rejected. In addition, coherence with other related policy instruments will have to be considered for example to exploit synergies (e.g. compliance monitoring by competent authorities) and to avoid undermining the effectiveness of existing instruments or raising compliance costs.

Policy instruments at the EU level can be placed into the following broad categories although there may be overlaps or combinations (such as obligations to accept mutual recognition of alternative rules and standards):

- (1) "Hard" legally binding rules;
- (2) "Soft" regulation;
- (3) Education and information;
- (4) Economic instruments.

2. "HARD" LEGALLY BINDING EU RULES

Binding legal rules are used to specify the behaviour required of organisations or individuals. It is appropriate to address activities with potentially serious risks of impacts for the economy, the environment or individuals and where legal certainty and enforcement backed by legal sanctions are necessary. It may also be the only available option if there is no scope for "softer" self-regulatory actions by business organisations or when such approaches have failed. Alternatively, binding acts may be used to establish essential requirements or framework which are supported by "soft" instruments such as technical standards.

When well designed, such hard rules provide clarity as to the behaviour which is expected, making it relatively straightforward to identify non-compliant behaviour. However, regulators will need to have the capacity, resources and sector specific

¹⁴³ See Tool #5 on *Legal basis, subsidiarity and proportionality*.

knowledge to make the legislation work effectively. In addition, the "one size fits all" approach of uniform standards may not capture the variation in compliance costs across economic operators, which introduces inefficiencies and raises overall costs of the policy. Such command and control approaches may be beneficial as a starting point, when regulators are faced with a significant problem yet have too little information to support a market-based instrument (or where the incentives for trading are limited) means the gains of a market-based instrument would be outweighed by the costs.

In the EU context, Article 288 TFEU establishes three types of binding acts:

Regulations are directly applicable in all Member States and binding in their entirety. Regulations are used most commonly where it is important to achieve a uniform implementation of a policy intervention such as in the internal market or the governance of mergers.

Directives are binding on the Member States to which they are addressed in respect of the result to be achieved but the specific form and methods are left to national authorities to decide. Directives should, as far as possible, be general in nature and cover the objectives, periods of validity and essential requirements, while technicalities and details should be left to the Member States to decide. A proper balance should be struck between general principles and detailed provisions in order to avoid excessive delegated acts to supplement the legislative act. Framework directives set out general principles, procedures, and requirements for legislation in different sectors. Subsequent 'daughter' directives are then adopted with specific rules for individual products, sectors etc.

Decisions are binding in their entirety on those to whom the Decision is addressed (e.g. individuals, companies or Member States).

Box 1. Examples

- The National Emissions Ceilings Directive¹⁴⁴ sets out national emissions targets for Member States, without specifying exactly how these are to be achieved.
- The Working Time Directive¹⁴⁵ stipulates that too much overtime work is illegal. The directive sets out minimum rest periods and a maximum number of working hours, but it is up to each country to devise its own laws on how to implement this.
- The Machinery Directive¹⁴⁶ sets detailed health and safety rules for placing on the market and/or putting it into service including market surveillance of machinery. The Directive sets out only the essential health and safety requirements while more detailed specifications are given in voluntary harmonised European standards (i.e. "technical standards" see section 3.2) adopted on the basis of a request made by

¹⁴⁴ Directive 2010/75/EC

¹⁴⁵ Directive 2003/88/EC

¹⁴⁶ Directive 2006/42/EC

the Commission.

- The Biocides Regulation sets out the detailed rules concerning the making available on the market and the use of biocidal products¹⁴⁷;
- The Effort Sharing Decision¹⁴⁸ establishes each Member State's greenhouse gas emission reduction targets up to 2020 in sectors outside of the Emissions Trading System.

3. "SOFT" REGULATION

When the subsidiarity and proportionality analysis of possible ways to address a given problem demonstrate that traditional law instruments (regulations, directives, decisions) are not necessary, the Commission may resort to "soft", more flexible approaches instead. A range of policy instruments is available, including Recommendations, technical standards, "pure" voluntary bottom-up initiatives (self-regulation) to legislation-induced co-regulatory actions. In practice, it is often hard to define the exact nature of a given soft regulatory approach. Thus, the list of instruments below is only illustrative, with many hybrid solutions also possible.

3.1. Self-regulation and co-regulation

Self-regulation is where business or industry sectors formulate codes of conduct or operating constraints on their own initiative for which they are responsible for enforcing. However, pure self-regulation is uncommon and at the EU level it generally involves the Commission in instigating or facilitating the drawing up of the voluntary agreement.

Self-regulation by the relevant industry can in suitable cases deliver the policy objectives faster or in a more cost-effective manner compared to mandatory requirements. They also allow greater flexibility to adapt to technological change (e.g. in the ICT-related areas of activity) and market sensitivities. Voluntary agreements work when the interests of society and the industry grouping coincide; otherwise it is unlikely that industry will voluntarily take the necessary steps without external influence such as the Commission, or other parts of civil society such as NGOs. A challenge of such approaches is to ensure that the desired policy outcome is delivered in practice as the conventional enforcement mechanisms associated with regulation are not available.

Co-regulation is a mechanism whereby the Union Legislator entrusts the attainment of specific policy objectives set out in legislation or other policy documents to parties which are recognised in the field (such as economic operators, social partners, non-governmental organisations, standardisation bodies or associations). Recognition of such public-private arrangements may be done through cooperation agreements or in Union legislation. Under this "light" regulatory approach, the relevant policy initiatives establish the key deadlines and mechanisms for implementation, the methods of monitoring the application of the legislation and any sanctions. Co-regulation can combine the advantages of the binding nature of legislation with a flexible self-regulatory approach to implementation that draws on the experience of the parties concerned and

¹⁴⁷ Regulation (EC) No 528/2012

¹⁴⁸ Decision No 406/2009/EC

can foster innovation. Co-regulation can remove barriers to the single market, simplify rules and can be implemented flexibly and quickly. The New Legislative Framework type of legislation (see box 4) falls within this category.

Box 2. Examples of self & co-regulation

Reduction of CO₂ emissions from cars

The Commission previously recognised voluntary agreements with the European, Japanese and Korean car manufacturers to reduce the CO₂ emissions of their new vehicles, but which were subsequently replaced by regulation. These commitments were recognised by the Commission in form of several Recommendations. On 7 February 2007, the Commission adopted two parallel Communications: a Communication setting out the results of the review of the Community Strategy to reduce CO₂ emissions from passenger cars and light-commercial vehicles and a Communication on a Competitive Automotive Regulatory Framework for the 21st Century (CARS21). The Communications underlined that progress had been made towards the target of 140g CO₂/km by 2008/2009, but that the Community objective of 120 g CO₂/km would not be met by 2012 in the absence of additional measures. The Communications proposed an integrated approach with a view to reaching the Community target of 120g CO₂/km by 2012 and announced that the Commission would propose a legislative framework to achieve the Community objective by focusing on mandatory reductions of emissions of CO₂ to reach an objective of 130g CO₂/km for the average new car fleet by means of improvements in vehicle motor technology.

Better internet for kids: industry organising itself answering a call from the Commission

'The CEO coalition to make a better internet for kids'¹⁴⁹, launched in December 2011 in response to voiced requests from the Commission, is a cooperative voluntary intervention designed to respond to emerging challenges arising from the diverse ways in which young Europeans go online. Companies-signatories to the Coalition committed to take positive action to make the internet a safer place for kids by means of establishing a five-step action plan.

The civil society and researchers have also been involved in the negotiations of these agreements. They provided evidence of the (then) current state of play for child safety online, best practices, voiced opinions. The main civil society organisations involved were those active in the area of child safety. The Commission functioned as a "broker" of trust, providing logistics and making sure all interested parties were invited in all negotiations, as well as providing publicity to the initiative.

One year after the launch of the Coalition, the signatories have made statements on how they implemented the action plan and proposed recommendations for improvement. At this stage the Commission has not appointed any independent expert to monitor the implementation although DG CNECT continues to follow the initiative but without concrete milestones/actions.

The success of self- and co-regulation depends in essence on several key factors which include: representativeness, transparency, legal compliance and effective implementation

¹⁴⁹ <https://ec.europa.eu/digital-single-market/en/self-regulation-and-stakeholders-better-internet-kids>

and monitoring.¹⁵⁰ The Commission services have prepared a set of best practice principles which should be reflected in all self and co-regulation initiatives¹⁵¹ (see attached appendix). These are divided into two phases: the inception phase and the implementation phase. In the inception phase, every self and co-regulation initiative should be open to all interested parties sufficiently representing the sector/area at stake, that in good faith are willing to accomplish clearly defined objectives in compliance with the legal framework (EU and/or national). In the implementation phase, each self and co-regulation initiative should be transparent as to the means of financing, be open to iterative improvements, and have built-in monitoring arrangements and evaluation mechanisms allowing for fair dispute resolution and sanctions.

The self and co-regulation initiatives cannot a priori be excluded from any policy area. However, based on the information available in the monitoring database run by the EESC¹⁵², they are present in areas covered by 15 DGs of the Commission. The bulk of them (80%) remains within the remit of six DGs, i.e. GROW, SANTE, EMPL, CNECT, FISMA and JUST.

Box 3. Experience of voluntary agreements under the Ecodesign Directive

- Directive 2009/125/EC establishes a framework for the setting of ecodesign requirements for energy-related products. Ecodesign aims at reducing the environmental impact of products, including the energy consumption throughout their entire life cycle. Mandatory and voluntary approaches within the same instrument.
- Implementing measures impose legally binding design criteria or recognise voluntary agreements. Two voluntary agreements have been implemented regarding the energy consumption of Complex Set Top Boxes within the European Union; and the environmental performance of imaging equipment on the European Market.
- Self-regulation appears to work best when a broad cross section of the market sector can be included which also lessens the risk of free-riders;
- Transparency is important to monitor performance of the agreement. Reliable and objective information should be available from independent entities.
- A credible system to ensure compliance with commitments is vital and should involve a body outside of the direct control of the parties to the agreement.
- Administrative and other costs of governing a voluntary agreement should be assessed during the IA process so that a fair comparison is made to alternative policy approaches (such costs include independent compliance monitoring, meetings with parties to the agreement, the internal resources in the Commission to manage/update the agreement, etc.)

¹⁵⁰ Based on EESC SMO report "European Self- and Co-Regulation" (http://www.eesc.europa.eu/resources/docs/auto_coregulation_en--2.pdf), July 2013 and re-affirmed in the own initiative opinion adopted on April 22 <http://www.eesc.europa.eu/?i=portal.en.int-opinions.32859>.

¹⁵¹ <http://ec.europa.eu/digital-agenda/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice>

¹⁵² <http://www.eesc.europa.eu/?i=portal.en.smo-database>

3.2. Technical standards

Standards are private and voluntary documents developed by recognised standardisation bodies that set out specifications and other technical information with regard to various kinds of products, materials, services and processes. They provide a common understanding among businesses, other stakeholders and public authorities on the commonly recognised state of the art and they are frequently reviewed and revised. They are developed internationally by the international standardisation bodies and in Europe by the European standardisation organisations (ESOs, see Box 4). European standardisation is a key instrument for consolidating the Single Market, supporting the competitiveness of European industry in a global market, harmonising conflicting national standards and facilitating cross-border trade in a less intrusive manner than technical regulations. The Commission has an active standardisation policy¹⁵³ and co-operation agreements¹⁵⁴ with the ESOs.

Regulation (EU) No 1025/2012¹⁵⁵ sets the legal framework for the Union to use voluntary European standardisation as a recognised policy tool in support of Union legislation and policies for the products and for the services. It sets procedures for the Commission to request the ESOs to develop voluntary European standards or European standardisation deliverables which e.g. can be used to specify how to comply with generally worded legal requirements. Such standards can avoid regulation (like “harmonised standards”) or they permit legislation which concentrates only on the essential requirements and where technical details can be left to voluntary standards.

The Regulation sets also requirements for ESOs about the transparency of their standardisation work programmes and standards, requirements on stakeholder participation and allows the Commission to finance the ESOs when they execute specific tasks on the basis of Commission requests. The Regulation aims to ensure that the European standardisation process is sufficiently inclusive allowing all stakeholders, including SMEs, consumers, workers’ and environmental organisation to contribute (*see Box 4*).

Box 4. European standards: A key instrument for the single market in goods and services

- A European standard is a standard that has been adopted by one of the three recognised¹⁵⁶ European standardisation organisations (ESOs): the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec) or the European Telecommunications Standards Institute (ETSI).
- The ESOs are private organisations and they bring together industry, other

¹⁵³ http://ec.europa.eu/growth/single-market/european-standards/policy/index_en.htm

¹⁵⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003XC0416%2803%29>

¹⁵⁵ OJ L 316, 14.11.2012, p. 12–33

¹⁵⁶ Annex I of Regulation (EU) No 1025/2012 on European standardisation

stakeholders and the national standardisation bodies of EU/EEA and of some neighbouring countries. Once a European standard is developed and agreed, the National standardisation bodies, who are members of the ESOs, should transpose it as a national standard and they must withdraw all conflicting national standards. Moreover, more and more European standards are also adopted as identical national standards outside EU/EEA around the world. The ESOs have also close co-operation with international standardisation bodies and they transpose ISO/IEC standards as equivalent European standards.

- The ESOs develop European standards and other deliverables mainly as a response to specific needs that have been identified by businesses and other users of standards. Since late 1980s the Commission has issued standardisation requests to the ESOs when specific voluntary standards are beneficial to support objectives of the Union.
- Around 20% of the European standards or other deliverables published by the ESOs have been developed in response to specific standardisation requests (“mandates”) issued by the Commission. Most of these standards are known as 'harmonised standards'¹⁵⁷ which support application of Union’s harmonisation legislation for products (**New Legislative Framework**¹⁵⁸). In such cases, a standard may provide 'presumption of conformity' with the essential requirements of the relevant legislation.
- DG GROW manages the Commission's relationship with the ESOs and provides tools, databases and guidance on how to use voluntary European standards to support Union legislation and policies. It also co-ordinates the preparation of standardisation requests¹⁵⁹ to the ESOs (see SWD(2015) 205)¹⁶⁰.

Regulatory use of private technical standards, (i.e. a reference to technical standards in Union legislation) should be limited, as far as possible, to European standards adopted by the ESOs and requested by the Commission using its standardisation requests. This is because of the public-private partnership established between the Union and the ESOs and the recognition of ESOs by Regulation (EU) No 1025/2012. In addition, referenced European standards may be established on the basis of Commission requests to the ESOs; Regulation (EU) No 1025/2012 sets high inclusiveness and transparency requirements for the ESOs and all European standards are available as national standards in all Member States.

There are two principal referencing techniques:

- *Indirect referencing* to technical standards (preferred referencing technique), and
- *Direct referencing* to technical standards.

Indirect referencing is where Union legislation makes a collective reference to unspecified harmonised or other European standards adopted on the basis of a

¹⁵⁷ http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/index_en.htm

¹⁵⁸ http://ec.europa.eu/growth/single-market/goods/new-legislative-framework/index_en.htm

¹⁵⁹ http://ec.europa.eu/growth/single-market/european-standards/requests/index_en.htm

¹⁶⁰ http://ec.europa.eu/growth/single-market/european-standards/vademecum/index_en.htm

Commission request and where the Commission subsequently publishes and updates the exact references of such standards in the *Official Journal* (C series) in line with Article 10(5)-(6) of Regulation (EU) No 1025/2012. In this case, the Commission, in its standardisation request, defines the overall scope for the requested standards and sets generic requirements as to their content. After the standardisation work, the Commission assesses whether the requirements set in its request were fulfilled before publishing the references of the standards in the *Official Journal*. In addition, a Member State and the European Parliament may challenge the standard, in line with Article 11(1) of the Regulation (EU) No 1025/2012, following publication of the references in the *Official Journal*.

Where indirectly referenced technical standards, even when voluntary, confer a legal effect, such technical standards fall under Article 267 of TFEU meaning that the Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning the validity and interpretation of such standards.¹⁶¹

Direct referencing (to standards in Union legislation) is a technique where the relevant Union legislation itself contains an exact reference to a standard or parts thereof as set by the Legislator. If direct referencing to technical standards is used, the relevant Union act should also foresee a procedure for updating these references e.g. by using Delegated Acts. Union legislation should be drafted carefully taking account of the different nature of binding Union acts and the voluntary nature of technical standards. Voluntary technical standards may, however, confer a legal effect like harmonised standards in Union harmonisation legislation for products.

Independently of the referencing techniques used, all references to technical standards which confer legal effect should be to a specific dated edition of the technical standard (dated references). With undated references, the Legislator would effectively lose control over the amendment of Union acts.

Box 5. Regulatory use of private technical standards in Union legislation

Issues to be considered when indirectly referencing voluntary harmonised European standards within the meaning of Article 2(1) c) and Article 10(6) of Regulation (EU) No 1025/2012:

- Voluntary standards cannot override national legislation.
- Essential or other legal requirements given in the Union act itself should be suitable to be supported by technical specifications given in voluntary and consensus based harmonised European standards elaborated by private European standardisation organisations.
- The domain where technical specifications for products or for services are needed should be mature enough to allow elaboration of technical specifications having a status of voluntary standards.
- Considering the voluntary nature of harmonised European standards the essential or other legal requirements should be sufficiently comprehensive, self-standing and understandable to be applied directly by economic operators even without

¹⁶¹ Case C-613/14

harmonised European standards. If this is not the case, and harmonised standards are still selected as a policy option, it should be considered whether alternative technical specifications should be available in the absence of any harmonised standards.

- Whether ESOs, in co-operation with relevant stakeholders, will have resources and/or willingness to accept the relevant future standardisation request (an Implementing Act) in order to elaborate the requested harmonised European standards.
- Overall time needed to draft and adopt the Commission's standardisation request and to elaborate a minimum set of harmonised European standards by the ESOs considering the date by which the proposed Union act should be fully enforceable.

3.3. Recommendations

Recommendation is a legal instrument that encourages those to whom it is addressed to act in a particular way without being binding on them. A Recommendation enables the Commission (or the Council) to establish non-binding rules for the Member States or, in certain cases, Union citizens¹⁶². A Recommendation can be used when there is not sufficient evidence that would justify a need of a binding legislative instrument, or in policy areas where the EU has supporting competence, complementing the action of Member States, and cannot by definition be prescriptive. Given the non-binding character of a Recommendation, which per se cannot guarantee that action will be taken by all Member States, detailed monitoring and evaluation arrangements should be foreseen and presented in the IA.

Box 6. Example of Recommendations:

- **Commission Recommendation** on access to a basic payment account – this IA assesses several instruments¹⁶³
- **Council Recommendation** on the validation of non-formal and informal learning¹⁶⁴

3.4. Open Method of Co-ordination

The open method of coordination (OMC), created as part of employment policy and the Luxembourg process, has been defined as an instrument of the Lisbon strategy (2000).

The OMC provides a framework for cooperation between the Member States, whose national policies can thus be directed towards certain common objectives. Under this intergovernmental method, the Member States are evaluated by one another (peer pressure), with the Commission's role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process.

¹⁶² E.g. [Recommendation 2002/236/EC](#)

¹⁶³ http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_0906_en.pdf

¹⁶⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0252:FIN:EN:PDF>

The open method of coordination takes place in areas where Union action cannot supersede Member State competence such as employment, social protection, social inclusion, education, youth and training.

It is based principally on:

- jointly identifying and defining objectives to be achieved (adopted by the Council);
- jointly established measuring instruments (statistics, indicators, guidelines);
- benchmarking, i.e. comparison of the Member States' performance and exchange of best practices (monitored by the Commission).

Depending on the areas concerned, the OMC involves so-called "soft law" measures which are binding on the Member States in varying degrees but which never take the form of directives, regulations or decisions. Thus, in the context of the Lisbon strategy, the OMC requires the Member States to draw up national reform plans and to forward them to the Commission. However, youth policy does not entail the setting of targets, and it is up to the Member States to decide on objectives without the need for any European level coordination of national action plans.

4. EDUCATION & INFORMATION

EU objectives may be reached by ensuring that citizens, consumers and producers are better informed. This type of policy instrument includes information and publicity campaigns, training, guidelines, disclosure requirements, and/or the introduction of standardised testing or rating systems.

The instrument can be cost-effective and it is easily adaptable to changing situations. It is generally most useful in those areas where:

- The lack or costs of collecting information is shown to be a key driver of the problem;
- The limited effectiveness of an existing piece of legislation is due to lacking information/clarity on how to comply with it (or enforce it).

A good example of an effective consumer information scheme is the energy labelling of energy using products¹⁶⁵.

5. ECONOMIC INSTRUMENTS

Market-based instruments (MBIs) include:

- taxes,
- charges,

¹⁶⁵ Directive 2010/30/EC; http://ec.europa.eu/energy/efficiency/labelling/labelling_en.htm

- fees;
- fines;
- penalties;
- liability and compensation schemes;
- subsidies and incentives;
- deposit-refund systems;
- labelling schemes; and
- tradable permit schemes.

The use of market based instruments most likely involves legislation, in form of hard regulation (a directive or a regulation). There are numerous definitions for market-based instruments based on different approaches and applications. The OECD defines economic instruments as tools that “affect estimates of the costs and benefits of alternative actions open to economic agents”¹⁶⁶. Or to put it more simply, if a tool affects the cost or price in the market, then it is a market-based economic instrument. This definition focuses on the economic signals and incentives. If it changes the cost or price of a good, service, activity, input or output then it is a market-based instrument.

MBIs – due to their economic nature – are most commonly used in the environmental policy area where they fit very well as a tool to cater for market failures/externalities. For an incentive effect, MBIs rely on individuals and/or firms having the ability to respond to the price signal. Market-based instruments can be applied to different components – e.g. on the inputs and hence change the production costs, or on the outputs and hence change the price. In some situations a change in cost will result in a change of the price (if the cost changes can be passed on to the consumer) and in other cases there will be less pass-through. The change in behaviour may not be immediate after prices change as it depends on elasticity of demand, which in the short term is in fact usually inelastic as there might not be adequate alternatives or substitutes or the ability to change consumption patterns.

Tradable offsets and permits allow producers to negotiate with each other and agents to ensure overall compliance, without this being necessarily enforced on all producers at the same level. The main advantage of tradable offsets and permits is their flexibility and cost-effectiveness. They allow potentially major reductions in compliance costs, since these can be redistributed to firms facing the lowest adjustment costs. Moreover, they may be easier to police since they offer incentives to firms to comply. Their main disadvantage is their potential complexity related to issues such as the need to ensure a satisfactory initial distribution of permits. The most obvious example of such an instrument is the EU's Emissions Trading System¹⁶⁷.

¹⁶⁶ Organisation for Economic Co-operation and Development (OECD). 1994. *Managing the environment: the role of economic instruments*. OECD, Paris.

¹⁶⁷ Directive 2003/87/EC, 13 October 2003, OJ L 275, 25.10.2003, p.32

Taxes, charges and fees are potentially useful policy instrument to influence **private** behaviour towards public objectives. They also raise revenues. As other market-based instruments, they provide flexibility and cost-effectiveness and can be used to ensure that users pay the social price of their consumption. At the EU level, the ability to co-ordinate taxes is limited due to the need for a unanimous decision by the Council. When tax instruments are used to attain specific policy objectives, it must be ensured that they are in compliance with EC rules on state aid. The most recent example of such an approach is the proposal to overhaul the outdated rules on the taxation of energy products in the European Union and take into account both their CO₂ emissions and energy content¹⁶⁸.

6. COMBINATIONS OF INSTRUMENTS AND BEHAVIOURAL INSIGHTS

Some combinations of instruments are naturally complementary. New legislation or Recommendations can be informed by behavioural insights. Relevant examples are the ban of pre-checked boxes in the Consumer Rights Directive or the Recommendations on Online Gambling which put forward behavioural solutions to tackle irresponsible gambling. The use of economic incentives (e.g., taxation, tax reductions) and information disclosure can also be informed by behavioural evidence, notably when issues related to social norms and information overload are shown to be relevant.

Information disclosure is unlikely to be wholly effective on its own but they will nonetheless be important to complement other instruments. Monitoring is also likely to be needed to ensure the success and credibility of voluntary initiatives undertaken by industry. Economic instruments in the form of tax reductions coupled to binding rules can incentivise more effectively the desired behaviour (such as an investment in low-carbon technologies). Another example is the phase-out of leaded petrol in the European Union in 2000 which was accompanied in most Member States by a reduction in the duty level of unleaded petrol.

Some combinations can be counterproductive and should be avoided. More generally, where combinations of policy instruments are envisaged, they should aim to be mutually supportive and carefully calibrated to achieve policy goals in the most effective and efficient way.

More effective policy instruments could emerge if insights provided by behavioural sciences and empirical studies are available. Assumptions about the behaviour of individuals and businesses based on classical rational choice theory are not necessarily corroborated by observed evidence. Behavioural sciences may help bridge the gap between conventional assumptions that are adopted in most models and the observed biases in such a way to obtain a realistic representation of the problem matter and of its determinants. The IA tool on problem drivers provides several examples where the design or the intensity of the instrument is affected by behavioural insights¹⁶⁹.

¹⁶⁸ http://ec.europa.eu/taxation_customs/taxation/excise_duties/energy_products/legislation/index_en.htm

¹⁶⁹ See Tool #14 on *How to analyse problems*

Appendix

Principles for Better Self- and Co-Regulation

1. Conception

1.1. Participants

Except in cases where the competitive nature of an initiative makes this inappropriate, participants should represent as many as possible of potential useful actors in the field concerned, notably those having capacity to contribute to success. In case some organisations, notably SMEs, do not have the capacity to commit directly to the action, they may be represented by a relevant umbrella organisation.

Where, at launch, not all possible parties have come on board, later engagement should remain possible, and the conditions for it should be clearly stated. Participants are each fully accountable and respected for their specific contributions.

1.2. Openness

Envisaged actions should be prepared openly.

The preparatory phase should include the involvement of any interested parties: public authorities, enterprises, legislators, regulators and civil society. Public authorities should be ready to convene, moderate or observe, as most helps the process and if deemed appropriate.

The initial blueprint, or "concept agreement", for any action should be multi-stakeholder and developed in a concerted and collaborative way involving open exchange between interested parties. Where the field is too large to be effectively managed, the leaders of the action may select those mainly having capacity to contribute to success. Others wishing to support the initiative should be able to join deliberations with interested parties on terms that contribute to the process of decision-making.

The preservation of a similar degree of open governance in the operation of any resulting agreement is equally desirable. The initiative and its constitutive texts must therefore be widely publicised and easily accessible.

1.3. Good faith

Participants of different sizes and types have different contributing capacities. The different capabilities of participants, including the situation of SMEs, and smaller non-profit organisations, should be taken into account when designing the envisaged action.

Participants should bring to the preparatory process all information available to them that can contribute to a full analysis of the situation. Similarly, in launching an action, participants should ensure that their activities outside the action's scope are coherent with the aim of the action.

Both in developing and in executing self- and co-regulatory actions, participants are expected to commit real effort to success. They retain the possibility to withdraw, should the action fail to reach the agreed objectives.

1.4. Objectives

The objectives of the action should be set out clearly and unambiguously. They should start from well-defined baselines, both for the issue on which change is being pursued and for the commitments that participants have made. They should include targets and indicators allowing an evaluation of the impact of the action undertaken. **EN 2 EN**

1.5. Legal Compliance

Initiatives should be designed in compliance with applicable law and fundamental rights as enshrined in EU and national law. Participants are encouraged to have recourse to existing guidance¹ provided by public authorities. In case of doubts, an assessment clarifying, inter alia, impact and complementarity with the *acquis* and with the Charter of Fundamental Rights should be conducted.

2. Implementation

2.1. Iterative improvements

Successful actions will usually aim for a prompt start, with accountability and an iterative process of "learning by doing". A sustained interaction between all participants is required. Unless the action covers a short time-span, annual progress checks should be made, against the chosen objectives and indicators, as well as any available broader background data.

2.2. Monitoring

Monitoring must be conducted in a way that is sufficiently open and autonomous to command respect from all interested parties. Each participant shall monitor its performance against the agreed targets and indicators. Monitoring results are shared by each actor for discussion with the participants as a whole, and are made public. A monitoring framework or template will be commonly agreed. The results of the monitoring will be aggregated where possible. This should be done in a way that is transparent and objective.

2.3. Evaluation

Evaluation will allow participants to assess whether the action may be concluded, improved or replaced. The participants regularly and collectively assess performance not only against output commitments, but also as to impact. This should identify any shortfall in expected collective impact, any scope to improve the efficiency or effectiveness of the action, and any other desirable improvements.

2.4. Resolving disagreements

Disagreements inevitably arise involving either participants or others. As part of the iterative process of improvement, such disputes should receive timely attention, with a view to resolving them. These procedures may be confidential.

In addition, complaints by non-participants should be submitted to a panel of independent assessors which consist of majority of non-participants. The outcome of their work is made public. Non-compliance should be subject to a graduated scale of sanctions, with exclusion included and without prejudice to any consequences of non-compliance under the terms of the Unfair Commercial Practices Directive.

2.5. Financing

Participants to the action will provide the means necessary to fulfil the commitments. Public funders or others may in addition support the participation of civil society organisations lacking fully adequate means themselves to play their appropriate role. Such financial support should be made publicly known.