

Concept Note

Improving self- and co-regulation processes

Background

In its 2011 CSR communication, the European Commission committed to “launch a process in 2012 with enterprises and other stakeholders to develop a code of good practice for self- and co-regulation exercises, which should improve the effectiveness of the CSR process”.

Objectives

All fears to the contrary, the Commission does not want to set any framework rules for CSR. The idea of a code for self- and co-regulatory (SR/CR) processes is much more modest: to make explicit the benchmark that should apply in assessing the fitness for purpose of any initiative designed to deliver voluntary corporate action as SR or CR. In this narrow field, it would be important for corporate and other actors to have a clearer signal than exists today of what it takes for the Commission to accept a given commitment as a valid contribution to the pursuit of any given societal goal.

The aim of this initiative is to enhance the efficiency of self- and co-regulation processes. The increased complexity of the issues and challenges can render the cooperation of all parties with an interest in certain policy goals more and more crucial to success. In the Interinstitutional agreement¹, it is foreseen that “*The Commission will ensure that any use of co-regulation² or self-regulation³ ...meets the criteria of transparency (in particular the publicising of agreements) and representativeness of the parties involved. It must also represent added value for the general interest....*” In the Commission Communication⁴ “*Better Regulation for Growth and Jobs in the European Union*”, it is recalled that the appropriate use of self- and co-regulation processes “*will reinforce the effective application of the principles of proportionality and subsidiarity.*”

Demonstrating a high quality engagement in self- and co-regulatory processes is an important dimension of what can be counted as contributing to a “CSR behaviour”. The OECD guidelines, in particular II. A7, state that “*Enterprises should develop and apply affectively self-regulatory practices [...] that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate*”. Experience⁵ has demonstrated that successful self- and co-regulation processes build indeed on a set of consistent good practices, based on inclusiveness and transparency, as mentioned in the Interinstitutional agreement. There are design principles for such processes which, if followed, can deliver trust and, if ignored, can foil even the best intentions.

The code of good practice that will be developed and adopted under this action aims at setting guidelines for a rigorous practice of self and co-regulation across the Commission policies. This code will leave full

¹ the Interinstitutional Agreement on better Law-making 2003/C 321/01

² Co-regulation means the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations). -§18 of the the Interinstitutional Agreement on better Law-making 2003/C 321/01

³ Self-regulation is defined as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements). -§22 of the the Interinstitutional Agreement on better Law-making 2003/C 321/01

⁴ COM(2005)97.

⁵ Notably with the Commission 2006 Advertising Roundtable <http://www.asa.co.nz/pdfs/Madelin%20Report.pdf>

margin of manoeuvre to those involved in the process, regarding the substance of the outcome. It does not intend regulating corporate voluntarism, nor does it mean the end of corporate right to experiment. It aims at capturing evidence-based good practice on the design and delivery of self- and co-regulation processes. It aims at providing a benchmark that will increase trust and support for self- and co-regulation processes and make them convincing alternatives to hard regulations more often than actually the case, thereby creating conditions for an increased use of self- and co-regulation.

Preparation and implementation

The Commission proposes to set up a process based on two concentric circles. The inner circle will be made of an expert group tasked to support the Commission drafting of the code of good practice for self- and co-regulation exercises. The outer circle will be made of all those interested to join this conversation. The expert group will be asked to design the modes of engagement with the outer circle. ICT-based platforms will be used. The process should involve, among others, business representatives, trade unions, NGOs, consumers organisations, political actors. Synergies with similar endeavours at global, national or local levels will be sought.

Indicative calendar

- *1-2 February 2012: Consultation with CSR High Level Group (Member States) and CSR Forum Coordination Committee (stakeholders) on the basis of this concept note and a Commission outline of the code. **Call for suggestions for experts and for the design (format and channels) of the public consultation. Suggestions to be sent to nicole.dewandre@ec.europa.eu***
- March-May 2012: Contacts with the European Parliament (EP) and the European Economic and Social Committee (EESC) on the Commission outline of the code. Work of a small expert group, under Commission chairmanship, to draft the code.
- June 2012: Presentation of the draft code to the EP, the EESC, the CSR High Level Group (Member States) and CSR Forum Coordination Committee (stakeholders). Launch of an open consultation process.
- End 2012: Publication of the code of good practice.