



RESPONSE TO EC CONSULTATION ON A CODE FOR EFFECTIVE OPEN VOLUNTARISM

1. Please comment on the draft code

BUSINESSEUROPE is convinced that self- and co-regulation are valuable alternatives to regulatory measures. They can offer important advantages such as adaptability to evolving markets and flexibility and can be less burdensome for companies.

The definition of self-regulation in the 2003 Inter-Institutional Agreement on better law-making is the possibility for economic operators, the social partners, NGOs or associations to adopt amongst themselves and for themselves common guidelines, e.g. codes of practice or sectoral agreements. This highlights precisely the characteristics which provide that such initiatives have added value and are attractive for companies and other stakeholders: they are demand-driven; they provide the possibility to have an approach tailor-made to the specific characteristics of the company and sector and to target specific issues in a cooperative way between stakeholders; they give freedom of choice in which stakeholders to work with; and they respect the specific nature of the area under consideration.

Based on this understanding of what makes self- and co-regulation instruments useful, we do not believe that the approach currently taken by the Commission to develop a code for *'effective open voluntarism'* will provide added value for self- and co-regulation instruments nor for the promotion of CSR. We also do not believe that this EU level initiative will be attractive for companies or that there is a demand for it. The reasons are as follows:

- **The purpose of the draft code goes beyond self- and co-regulation.**

The draft code would be for use not only when engaging in self- and co-regulation processes, but also in other voluntary multistakeholder actions. This means that for signatories of the code, it would also apply to voluntary CSR activities. We cannot accept this, as such activities should not be subject to a set of detailed requirements.

There seems to be a lack of understanding of the distinction between self- and co-regulation on the one-hand and CSR on the other. Self and co-regulation are acknowledged by the EU as part of the better regulation agenda. They are processes or tools which can be a valid alternative to legislation. CSR, however, is much broader – it is a way in which companies integrate certain concerns, e.g. environmental/social into their business operations and increasingly business strategy, in close collaboration with stakeholders. Self- and co-regulation are simply one of the tools or processes which companies or sectors use to do this.

- **Asking companies and stakeholders to sign up to the code is not appropriate.**

It seems that the aim is for companies and stakeholders to sign up to the code, thereby committing to apply it in all future self- and co-regulation exercises they undertake (and other voluntary multistakeholder actions, as highlighted above). This is not acceptable, as it makes it much more formal and would codify such exercises. This is not in line with the voluntary nature of CSR and would be much less attractive for companies. In



general the target audience of the initiative is unclear, due to contradictory information, as at the same time, the draft code seems to be available for use by stakeholders as a reference document if and when they engage in a self- and/or co-regulation exercise. This causes unnecessary confusion.

In addition, according to the accompanying letter the draft code is developed for achieving EU policy objectives. Companies and/or sectors usually use a code to address the risks or needs of a company or sector. These different lines of approach also create confusion.

- **The draft code is too detailed and prescriptive.**

For example, it includes an obligation for companies which start such an initiative to ensure that all those concerned are allowed to participate in it. Although self- or co-regulation exercises should in principle be developed in a collaborative way, involving open exchange with interested parties, those starting such an initiative should decide if and which other stakeholders should be involved. This allows them to tailor it to the specific characteristics of the company and sector and decide how best to ensure value in the exercise.

It is also too prescriptive in the requirements for monitoring and reporting. Although regular and open reporting on the self- or co-regulation instrument is an aim to strive for, it should be up to those involved to decide how best to engender trust in the credibility of their initiative. Also, the setting up of a system allowing complaints by non-participants and participants, to be evaluated by independent assessors, may have a negative impact on the validity of such an initiative even if the complaints are completely unjustifiable. Evaluation by independent assessors would also be very costly, in particular for SMEs.

- **Basis of information and experience is not adequate.**

A range of self- and co-regulation instruments already exist, developed by different companies, sectors and stakeholders, as well as literature on the subject. The EU therefore has some knowledge in this area, as highlighted in the consultation document. However, we believe this is not an adequate basis on which to take action, since this information has not been shared or discussed with a broad range of stakeholders. This would be a more appropriate exercise as a basis for discussing design principles for self- and co-regulation instruments, which would have the benefit of the knowledge and possibly buy-in of a broader range of actors.

2a. Are you interested to take part in a network of excellence and community of practice of effective open voluntarism? Yes or No.

Yes

Please feel free to elaborate on your answer to the above question.

To promote self- and co-regulation in accordance with the voluntary nature of CSR, the European Commission should follow a different approach. There should firstly be a broader exercise of collating and promoting good practice examples, across a range of sectors and companies. This work could be done by such a network of excellence/ community of practice, led by employer organisations with the support of the Commission. However this should be as an alternative rather than in addition to



developing the code. This could allow for the exchange and publicizing of good practice examples of self- and co-regulation initiatives, with the support of the Commission to assemble and maintain an on-line library of this information. This information could then be made available to a wider group of stakeholders.

Furthermore, it may also be possible for this work to form the basis for the development of a practical guide on self- and co-regulation specifically related to CSR. This could have added value for the following reasons:

- It would be a better tool to promote the use of self- and co-regulation instruments, in a way which corresponds to the voluntary nature of CSR.
- It would be more relevant and attractive to companies and sectors than a formal code.
- It would better contribute to improving co- and self-regulation exercises by allowing stakeholders to draw on past experiences and lessons learnt and give inspiration for future self- and co-regulation initiatives.
- It could be an opportunity for companies individually or in a specific sector to further develop their dialogue amongst themselves and/or with stakeholders on issues which are specifically relevant to them.

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.

- Good practice from The Netherlands. See website: www.mvonederland.nl. MVO Nederland (CSR Netherlands) is the national knowledge centre and the national network organisation for corporate social responsibility (CSR) in one: *the* place to start for any entrepreneurs wishing to make their commercial operations sustainable.
- Website of the Flanders' region on CSR which gives valuable information on CSR, good practices, practical examples , practical toolkit, self-evaluation documents, to help companies which think of starting CSR-programmes or improving them. <http://www.mvovlaanderen.be/zoeken>

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 on better lawmaking implies, 2003 Inter-institutional Agreement 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.



BUSINESSEUROPE has consistently stated that it favours increased recourse to alternatives to legislation and that these alternative options should always be taken into consideration when an impact assessment is carried out. The options of self- and co-regulation should always be analysed in depth and must include a “no-policy change” baseline scenario. The Impact Assessment Board should check this.