29 May 2012

EU CODE OF GOOD PRACTICE FOR SELF- AND CO-REGULATION INSTRUMENTS

This paper aims to provide preliminary comments on the commission's proposal to establish an EU Code of good practice for self- and co-regulation instruments on CSR. This is one of the initiatives of the Commission's renewed CSR Strategy, published in October 2011 (COM(2011) 681). In paragraph 4.3 of this Communication the following explanation is given: "*Enterprises often participate in self- or co-regulation processes, for example sector-wide codes of conduct on societal issues relevant to the sector in question. When such processes are designed in an appropriate way they can earn stakeholder support and be an effective means of ensuring responsible business conduct. Self and co-regulation are acknowledged by the EU as a part of the better regulation agenda*".

At this stage, despite the working papers recently sent to us for comments and additional information provided, the envisaged code of good practice lacks clarity and there are a number of unanswered questions regarding the objectives and the way that this initiative is intended to become operational. This means that at this stage BUSINESSEUROPE is not in a position to give either its support or to reject the initiative. We hope that more information and clarity will be provided by the commission in due course.

1. General remarks and questions

As stated in our Position Paper on the Commission's CSR Strategy, BUSINESSEUROPE believes that self- or co-regulation exercises can be useful tools to focus on the specific challenges within a particular sector or in companies. Such tools can be a good and less burdensome alternative to regulation. They can be effective in targeting specific issues in a cooperative way between stakeholders. We agree that it may be useful to revive interest in using this type of policy instrument and increasing its credibility. Also, providing guidance in this area to companies individually or in a specific sector may generally be an opportunity for some to further develop their dialogue amongst themselves and/or with stakeholders on issues which are specifically relevant to them.

However, in this respect, we still have a number of general key questions
- Will such a code lead to the setting of specific criteria or codify such instruments, as seems to be suggested in the commission's paper?
- Or will it be about collating and promoting good practice examples which may provide inspiration and guidance to others?
- Who defines the issues that will be discussed when developing a self-or co-regulation instrument?
- Will such a code of good practice be used by the European Commission to encourage other actors to take action in policy areas that the commission itself deems relevant or which it is under pressure from other stakeholders to tackle?

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- Will a prerequisite of using the code of good practice be to focus on EU policy objectives?
- Who defines what constitutes 'relevant stakeholders' and 'interested parties'?
- Who will provide financial resources for such an initiative?
- How will it be ensured that it is the participating parties who develop ownership over the process?
- What will be the role of the European Commission in the process – will it be to simply explain the tool or will it have a monitoring role?

The reasoning and impetus for the development of the code of good practice specifically linked to CSR, is still unclear. Why has CSR in particular been targeted for the development of a code of good practice for self- and co-regulation instruments?

2. Specific remarks

BUSINESSEUROPE could only be supportive of such an initiative, if we are convinced that the following conditions are met:

- The target audience are primarily companies or business sectors, which have already decided to enter into a self- or co-regulation exercise; there should be no expectation on them to agree on such a code or to sign up to an already existing code; the results of the process should not be defined beforehand. It should be clear that the code is strictly voluntary.
- Neither companies/sectors nor the self- or co-regulation instruments that they develop, should be judged in terms of whether they have followed the code of good practice.
- The objective is to provide them with examples of good practice and guidance on useful processes and design principles for such exercises.
- For the tool to be supportive for companies or sectors, it could be efficient for the parties concerned to first start the self- or co-regulation process amongst themselves taking into account the opinions of relevant stakeholders. In a later stage they could gradually increase the involvement of other stakeholders of their choice to broaden the support for the self-regulation instrument.
- Regular and open reporting on the self- or co- regulation instrument is an aim to strive for but that goal can also be reached some years after the start of the initiative.
- Those engaged in the exercise are solely responsible for deciding which issues should be covered and the design of the instrument.
- There is no role for public authorities as moderator or the financing of stakeholders. Public authorities should be at a distance in such self- and co regulation processes.

The use of the term 'code' is not helpful, as this suggests a rather formal instrument. The term 'guide' may be more relevant and attractive to companies and sectors. The focus should be on 'good design principles' and an incremental process.

The commission defines the following success criteria:

"Success requires without exception that an initiative:

- secures broad support among, and participation from, interested parties;
- defines effective rules for rapid collective and individual action;

- sets clear performance indicators, agreed with interested parties,
- mandates regular and open reporting on performance and provides a mechanism to take account of feedback in adapting the approach and improving delivery;
- makes available the resulting body of knowledge to drive better policy making."

We believe that these five bullet points in the commission's paper do focus on design principles and seem to be appropriate, under the condition that they are set as principles to strive for. Any self- and co-regulation process has to be considered as an open process where the results must not be anticipated.

Whilst it may be useful to gather experts on this issue, as well as collating cases of good practice, we do not see the need for developing "a cross-EU and multi-sectoral Network of Excellence", as suggested in the commission's paper. If a guide of good practice is developed, it should be the role of the Commission to promote its use with companies and stakeholders that have already decided to enter into a self- or co-regulation exercise. Of course, this does not stop others promoting it. In this sense, we do not believe that the aim should be for companies and organisations to sign up to such a code and use it when they enter into a self- or co-regulation exercise. This would deter them from using it. Rather, it should be promoted as a guidance tool which they can refer to during such an exercise.