SELF AND COREGULATION AT EU LEVEL
EESC OPINION

Cons. Cat. Meeting

BRUXELLES EESC

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MAIN PURPOSE OF THE INITIATIVE

- Legislative simplification is one of the recurring themes of all national and European programmes and will most certainly be part of the proposals and priorities of the new Commission and new EP. The EESC Bureau, expressing the concerns of civil society, decided to anticipate such programmes and to make a positive contribution to them.

- The EESC has undeniably been most committed in defining and highlighting the role of self-regulation and co-regulation, in numerous opinions, especially those issued by the INT section (more than 35) and also creating and systematically adding to its observatory in this area (SMO), publishing, updating and publicising the key document on the current state of self-regulation and co-regulation in Europe.
MAIN PURPOSE OF THE INITIATIVE

- However the EESC recognised that a political-legislative discussion, clearly defining the legal framework which should govern these instruments, specify their legal nature, lay down the conditions for their validity, define their areas of application, clarify links with regulation by other bodies and set down their limits in a consistent, coherent and harmonised framework at European level was manifestly lacking.

- This is the purpose of the ongoing elaboration of our own initiative opinion.
DEFINITION AND DELIMITATION OF THE SCOPE

- A) Basic notions and distinctions
  - a) Definitions
  - b) Characterization
- B) The current EU Legal Framework
- C) Towards a better re-definition of the regulatory role of self-regulation and co-regulation in the European Economic Area
- D) Leading to a proposal for Revision of the IIA or other instruments
THREE MAIN CONCERNS FROM A CIVIL SOCIETY PRAGMATIC VIEW POINT:

A) “Better Regulation”
   a) Simplification,
   b) Smart regulation
   c) Proactive law approach
   c) 28th regime

B) Democratic participation
   Link to Delegated and Implementing Acts
   (Information Report and Opinion)

C) Subsidiarity
SUMMARY OF EESC’S THINKING IN ITS PREVIOUS OPINIONS

- a) Self-regulation must be in conformity with, and backed by, the law; it must be founded in a community of interest between business and the public; it must be enforceable, verifiable and auditable; it must also be effective, with clear means of recourse, particularly across borders.

- b) In a democratic political framework, private regulation must generally further develop or apply public regulation, even replacing it in some areas, including unwritten rules originating in common law or rules of procedure which the legislator and public authority wish, explicitly or implicitly, to ensure are respected, e.g. the ethical codes of conduct.
SUMMARY OF EESC’S THINKING IN ITS PREVIOUS OPINIONS

- The success of co-regulation and self-regulation depends on several factors: the account they take of the general interest, the transparency of the system, the representativeness and skill of those involved, the effectiveness of the monitoring - including sanctions if necessary - and a mutual spirit of partnership between the parties concerned and the public authorities.
SUMMARY OF EESC’S THINKING IN ITS PREVIOUS OPINIONS

- Co-regulation and self-regulation offer many advantages: they remove barriers to the single market, they simplify rules, they can be implemented flexibly and quickly, they free up legislative capacity and ensure the co-responsibility of the stakeholders involved.

- They also have their limits, which depend primarily on effective monitoring and sanctions and total compatibility with all existing legal rules and on the need for an adequate legislative framework in areas affecting health, safety and services of general interest.
WORKING METHOD

- A) The SMO framework (INT SEC)
- B) The Database for self and co regulation initiatives
- C) Consulting experts, reading papers from academics and experts and meeting stakeholders
- D) Public hearing (27.01.2015)
- E) Participating in events (CoP 24.11.14)
- F) Other Study Groups in related matters (REFIT)
First Working Document “Setting the scene”

1. Some basic concepts
2. 'Straight regulation', self-regulation and co-regulation

A) Concepts and definitions
B) Codes of ethics and good practice
   - transparency
C) Voluntary autonomous self-determination and self-regulation
WORKING METHOD

SMO Palermo meeting

Interim Paper – The “status quo”

Mainly focused on the current EU legal framework for self-regulation and co-regulation

Mrs Dewandre Presentation on CoP
There are no references whatsoever to self- or co-regulation to be found in the TFEU. Neither of these terms is seen as a source of Community law.

The question of self-regulation and co-regulation was relatively absent from the Commission's initiatives on Better regulation.

The major exception is the InterinstitUTIONal agreement on better law-making.
INTER-INSTITUTIONAL AGREEMENT
ON BETTER LAW MAKING

- BASIC CONCEPTION
  - A) Application of the principles of subsidiarity and proportionality
  - B) Use of alternative methods of regulation

- MAIN REQUISITE: consistency with Community law

- MAIN CRITERIA
  - a) Transparency
  - b) Representativness
  - c) Added value for the general interest

- NOT APPLICABLE
  - a) Fundamental rights or
  - b) Important political options
  - c) Where rules must be applied in a uniform fashion
DEFINITIONS

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).

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).
MAIN QUESTIONS

- JURIDICAL NATURE OF SELF AND CO-REGULATION IN THE REGULATORY EU ENVIRONMENT – A KIND OF “DELEGATION”?

- CHARTER OF FONDAMENTAL RIGHTS?

- JURIDICAL NATURE OF THE IIA
  
a) no more than an inter institutional "undertaking" which does not in itself lay any legal obligation on third parties

b) or a true “source of law”

c) and if so what kind of law
MAIN QUESTIONS

- LEGAL BASIS FOR UE INITIATIVES ON SELF AND CO-REGULATION
  The role of “secondary legislation”

- CLEAR DISTINCTION FROM:
  A) Open method of coordination (OMC)
  B) The so called « soft law »

  instruments laid down in the original law or secondary legislation, which do not have binding effect in themselves, but represent the definition of policy options with potential indirect legal effect
MAIN QUESTIONS

- BESIDES THE CO-REGULATION AND THE SELF REGULATION AS DEFINED IN THE IIA, IS THERE A PLACE FOR A “TERTIUM GENUS”? 
- SHOULD THE EU DEFINE MORE IN-DEPTH THE REQUISITES AND THE CONDITIONS OF A SOUND CO-AND SELF REGULATION? 
- IF YES, HOW? WHICH LEGAL INSTRUMENT? 
- ONLY AT EU LEVEL OR AT NATIONAL LEVEL? 
- AND WHAT ABOUT INTERNATIONAL SELF REGULATION AGREEMENTS?
MAIN QUESTIONS

- SHOULD THE EU (COMMISSION) MONITOR THE FUNCTIONING OF THE SYSTEMS “PROMOTED” (CO-REG) OR “RECOGNIZED” (SELF-REG)
  A) ON WHICH GROUND
  B) BY WHICH MEANS

- SHOULD THE COURT OF JUSTICE OR NATIONAL COURTS PLAY A ROLE IN THE EVALUATION OF DEFINITION IMPLEMENTATION AND PERFORMANCE OF THESE SCHEMES? ON WHICH GROUNDS?
OBJECTIVE:
A better definition of the regulatory role of self-regulation and co-regulation in the European Economic Area

IS THERE A ROLE FOR EU IN THIS FIELD?
A) JURIDICAL NATURE OF THE EU ROLE
B) CHOICE OF THE INSTRUMENTS
C) REVISION OF THE IIA
LAYOUT OF THE OPINION

- DEFINING BASIC PRINCIPLES AND REQUISITES (Rule of law, democratic principles)
- IDENTIFYING ADVANTAGES AND LIMITATIONS
- DEFINITION OF THE DIFFERENT TYPES AND CATEGORIES OF SELF AND CO-REGULATION
LAYOUT OF THE OPINION

- ELABORATING ON THE EFFECTS OF SELF AND CO REGULATION (Competition law, free movement, general interest)
- DELIMITATION OF THE FIELDS OF APPLICATION AND SECTORIAL SPECIFICITIES
- DEFINING THE ROLE OF THE EU INSTITUTIONS, MEMBER STATES AND CIVIL SOCIETY