



European Economic and Social Committee

SELF- AND COREGULATION AT EU LEVEL

Opinion of the European Economic and Social Committee
(Rapp. PEGADO LIZ)

**THE COUNCIL OF EUROPEAN
GEODESIC SURVEYORS**

LIMASSOL, CYPRUS (20-21.03.2015)



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MAIN PURPOSE OF THE INITIATIVE (1)

- ❖ **Legislative simplification** is a recurring theme in national and EU programmes and a priority of the Juncker Commission;
- ❖ **Interest and concern of civil society** lead the EESC to make contributions;
- ❖ **EESC commitment in self- and co-regulation issues:** over 35 opinions, management of the EU's database on self- and co-regulation to scrutinize the current situation and developments.



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MAIN PURPOSE OF THE INITIATIVE (2)

However, the EESC recognized that **what is lacking is a political and legislative debate** to provide:

- ❖ A governing framework;
- ❖ A legal base;
- ❖ A definition of their scope of application;
- ❖ A clarification of:
 - ❖ Their link with hard and soft law;
 - ❖ Their nature and requisites
 - ❖ Their limits



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DEFINITION & SCOPE

- ❖ Basic notion and distinctions:
 - ❖ Definitions;
 - ❖ Characterization;
- ❖ Current EU legal framework;
- ❖ Redefining the regulatory role of self and co-regulation;
- ❖ Leading to the Revision of the *Inter-Institutional Agreement on Better Law-Making (2003)*:
 - ❖ The EU institutions will start negotiations end of February to produce a new Agreement by the end of 2015,



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THE EESC STANCE (1)

- ❖ Self-regulation must be in **conformity** with and **backed** by the law, **enforceable**, **verifiable**, **auditable** and allow for **cross-border recourse**;
- ❖ In a **democratic context** private regulation develops and applies public law;
- ❖ The success of self-regulation depends on factors such as relevance for the **general interest**, **transparency**, **representativeness**, **effectiveness of monitoring tools**, etc.



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THE EESC STANCE (2)

- ❖ **Advantages of self- and co-regulation:** removing barriers to the Single Market, simplification, flexibility and reactivity to changes, less legislative burden, co-responsibility of involved stakeholders;
- ❖ **Limitations of self- and co-regulation:** how effective are monitoring and sanctions, compatibility with hard law, framing sensitive areas such as public health, safety, services of general interest, etc.



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CURRENT LEGAL FRAMEWORK

- ❖ The **TFEU** makes **no reference** to self- and co-regulation;
- ❖ Until recently, self- and co-regulation were not on the EU institutions' radar:
- ❖ Sole reference text is the Inter-Institutional Agreement on Better Law-Making, short IIA (2003).
 - ❖ Hopefully this might change (Commission Program);
 - ❖ **Vice-President Timmermans** in charge of Better Regulation;



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THE “IIA” (PRINCIPLES)

❖ **Basic principles:**

- ❖ Subsidiarity and proportionality principles;
- ❖ Alternative methods of regulation;
- ❖ Consistency with EU law.

❖ **Main criteria:**

- ❖ Transparency;
- ❖ Representativeness;
- ❖ Added value for the general interest.

❖ **Not applicable to:**

- ❖ Fundamental rights;
- ❖ Important political options
- ❖ Rules that must be applied in a uniform fashion,



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THE “IIA” (DEFINITIONS)

- ❖ **Self-regulation:** *“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)”;*
- ❖ **Co-regulation:** *“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)”.*



MAIN ISSUES (1)

- ❖ Is self- or co-regulating a form of **delegation**?
- ❖ What about the **Charter of Fundamental Rights**?
- ❖ What is the **legal nature of the “IIA”**?
 - ❖ An non-binding inter-institutional “undertaking”?
 - ❖ A true source of law?
 - ❖ If so, what kind of law?
- ❖ What is the **legal basis** of self- and co-regulation?
- ❖ Relation with the **“Open Method of Coordination” (MOC)**?
- ❖ What is **“soft law”**?



MAIN ISSUES (2)

- ❖ Is there a place for a *“tertium genus”* in the “IIA”?
- ❖ Should the EU further **define the requisites and conditions** of self- and co-regulation?
 - ❖ If yes, how and through which **legal instrument**?
 - ❖ If yes, at **EU level** or at **national level**?
- ❖ What about a “trust mark”
- ❖ What about **international self- and co-regulatory agreements**?
- ❖ Should the EU **monitor initiatives**?
- ❖ What role for the **EU court of Justice** and the **national courts**?



LAY-OUT OF THE OPINION (1)

- ❖ **Objective:**
 - ❖ Delimitating the scope
 - ❖ Better general definition (Rule of law, democratic principles);
 - ❖ Defining types and categories of self- and co-regulation;
 - ❖ Determining key principles, parameters and requisites;
 - ❖ Identifying advantages and limitations;
- ❖ **What role for the EU?**
 - ❖ Juridical nature?
 - ❖ Choice of instruments?
 - ❖ “Who does what?” (institutions, Member States, stakeholders)
 - ❖ Revision of the “IIA”.



MAIN CONCLUSIONS (1)

- ❖ Self- and co-regulation are **regulating mechanisms**:
 - ❖ For relations and practices among economic stakeholders;
 - ❖ They are both spontaneous or mandated by law;
- ❖ They are important **complementary instruments**:
 - ❖ Supplementing “hard law” though not an alternative to “hard law”...
 - ❖ ...unless “fundamental rules” ensure compliance with the rule of law principles;
 - ❖ Neither EU treaties nor national Constitutions allow for this;
- ❖ They should obey **legally binding, enforceable principles**.



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MAIN CONCLUSIONS (2)

- ❖ The “IIA” is a **key step towards defining the scope** of self- and co-regulation at EU level;
- ❖ The “IIA” could be supplemented by **recommendations to the Member States**;
- ❖ The “IIA” should include consultation of the EESC and the Committee of the Regions



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Thank you for your attention!