

Voluntary agreements¹ under the Ecodesign Directive 2009/125/EC

1. Introduction

Under the Ecodesign Directive, voluntary agreements can, under certain conditions, be recognised as a valid alternative to EC regulation. This note aims at providing guidance on those conditions, based on the provisions of the Ecodesign Directive.

As a basic condition, voluntary agreements need a **high level of environmental ambition** and need to demonstrate that they are likely to deliver the policy objectives faster or in a less costly manner than mandatory requirements. In such case, they are considered a **preferred option** under the Ecodesign Directive (recital 18) and can be recognised by the Commission, which will refrain from adopting regulatory ecodesign requirements for the products covered by the agreement. However the Commission retains its right to introduce legislation, if a voluntary initiative fails to meet its objectives.

Self-regulatory initiatives are proposed by industry as **unilateral commitments** (recital 19 of the Ecodesign Directive): thus responsibility for voluntary agreements remains fully with industry. However, before recognising a voluntary agreement, the Commission, after consulting the members of the Consultation Forum, checks whether the proposal by industry fulfils the criteria of Annex VIII of the Ecodesign Directive, and with the assistance of the Committee (in its advisory capacity) monitors progress and results .

Unilateral commitments presented by the industry that do not correspond to the criteria under the Ecodesign Directive are still valuable and welcome, but cannot be recognised as valid alternatives to EC regulatory measures.

2. Content of the voluntary agreement

Article 17 of the Ecodesign Directive states: “Voluntary agreements or other self-regulation measures presented as alternatives to implementing measures in the context of this Directive shall be assessed at least on the basis of Annex VIII”. Voluntary agreements proposed by industry will therefore be assessed against the **9 criteria indicated in Annex VIII** of the Directive.

For some product groups, notably those selected in the Ecodesign Working Plan², preparatory studies may already provide extensive technical background on the products regarding functional units, performance parameters, existing legislation and standards, market data such

¹ Self-regulatory initiatives proposed by signatories as unilateral commitments

² Working Plan of 21 October 2008, valid until 21 October 2011 – COM (2008) 660

as stock and sales figures, energy consumption and other environmental impacts, best available technologies and technical options for improvement.

For other product groups, signatories should provide sufficient technical background (typically what is provided in preparatory studies although not necessarily with the same level of detail) to enable the Commission and stakeholders to assess the proposal, notably in terms of environmental improvement and the added value as compared with business-as-usual. The MEEuP³ should be used as far as possible.

Criterion 1: openness of participation

The self-regulatory initiative shall be open to any new signatory.

Criterion 2: added value

The self-regulatory initiative must deliver **added value**, i.e. **more than ‘business as usual’**, in terms of environmental performance of products in its scope

Criterion 3: representativeness

The self-regulatory initiative must cover a large majority of the relevant market. As an order of magnitude it means that in principle more than 70% of the products placed on the market should be covered by the agreement.

Criterion 4: quantified and staged objectives

The self-regulatory initiative must set **quantified and staged objectives**, starting from a well-defined baseline and measured through **clear and reliable indicators**, based on **extensive scientific and technological background**. These indicators must allow monitoring the compliance with the objectives.

Criterion 5: involvement of civil society

The self-regulatory initiative must be publicised, including through the use of Internet and other electronic means of disseminating information. The same must apply to interim and final monitoring reports. Interested stakeholders, including NGOs and consumer organisations, must be invited to comment on a self-regulatory initiative and have access to the relevant information (e.g. annual reports, meetings of the monitoring/steering body).

Criterion 6: monitoring and reporting

Signatories are responsible for including a well-designed, credible and reliable monitoring and reporting system in the self-regulatory initiative, based on verifiable, objective and detailed data. It is notably expected that the signatories will report annually to the Commission on their progress in meeting the objectives of the self-regulatory initiative. These reports will have the form of aggregated data gathered and submitted to the Commission. Member States wishing to verify the reported values will be granted access to the background data upon request. To enable independent inspection to occur the signatories will have to declare which products are covered by the VA and which are not.

Several other elements usually strengthen the credibility and effectiveness of a monitoring and reporting system within a self-regulatory initiative (see list below). It is up to signatories to select and combine existing possibilities in an appropriate manner, according to the specific situation of each industrial sector.

³ Methodology for the Ecodesign of Energy-using Products: http://ec.europa.eu/enterprise/policies/sustainable-business/sustainable-product-policy/ecodesign/methodology/index_en.htm

List of elements for increasing the credibility, effectiveness and transparency of a monitoring and reporting system within a self-regulatory initiative

- ∪ Quantified **results are measured** on the basis of verifiable and objective data. Such data can already be available (e.g. declarations of performance according to harmonised standard(s) under another Directive, voluntary environmental product declarations, Energy Label). If not, signatories should consider developing such schemes (e.g. development of standards in CEN/CENELEC).
- ∪ Relevant **environmental information is released** in a standardised format (e.g. environmental product declarations). If such a format is not already widespread or mandatory (e.g. Energy Label), signatories should consider committing to use it systematically.
- ∪ **Results are verified/ audited** by independent inspectors. Inspections by independent third party, if possible by an accredited/licensed body, can include verifying the accuracy of data contained in reports (e.g. data processing, data aggregation) and/or checking results on the ground (e.g. random spot checks for testing products' performances)
- ∪ A **monitoring body meets regularly** to monitor progress and is **open** to all interested stakeholders (e.g. NGOs and consumer organisations)
- ∪ **Sanctions** are established by the signatories in the agreement (the range of existing sanctions goes from naming and shaming to membership exclusion and private fines, notably in case a private label rewards compliance with the requirements of the voluntary initiative)

Criterion 7: cost-effectiveness of administering a self-regulatory initiative

The self-regulatory initiative, notably as regards monitoring, must not lead to a disproportionate administrative burden.

Criterion 8: sustainability

The self-regulatory initiative shall be in line with the objectives of the Ecodesign Directive and in particular: free circulation, enhanced environmental performance of products in a lifecycle perspective.

Criterion 9: incentive compatibility

The self-regulatory initiative shall be consistent with existing framework conditions, especially incentives.

3. Procedure

3.1. Procedure for recognition

- a) Industry provides the Commission with a **draft proposal** for a unilateral voluntary agreement – this may occur before, during or after a preparatory study, or without any planned or completed preparatory study.
- b) The Commission can invite industry to present its proposal to the **Consultation Forum**, in which stakeholders have the possibility to comment on the initiative.

- c) Depending on the **feedback** from the Consultation Forum, industry can modify its proposal and submit a revised version, on which the members of the Consultation Forum are consulted.
- d) The proposal is recognised by the Commission services if its assessment against the criteria of Annex VIII is deemed satisfactory, taking into account the feedback from the Consultation Forum. The recognition means:
 - The Commission will refrain from proposing Ecodesign implementing measures for the products falling into the scope of the recognised self-regulatory initiative provided that it delivers as intended. This does not preclude the execution of preparatory studies and adoption of implementing measures under other policy instruments (e.g. Energy Label, Ecolabel, etc.).
 - The Commission may publish the recognised self-regulatory initiative in the Official Journal (C-series).

3.2 Procedure for monitoring and reporting

- a) Signatories set up a monitoring/steering body to continuously follow progress and results under the voluntary initiative. Affected stakeholders (members of the Consultation Forum) are invited to attend its meetings as ‘observers’.
- b) Signatories submit to the Commission an annual report (possibly through an entity independent from signatories) on the basis of the individual signatories' reports. For quantified objectives the report shall include detailed figures based on agreed methods. For non-quantified objectives the report will indicate how they are met /implemented.
- c) The members of the Consultation Forum are consulted on an annual basis to take stock and monitor results of the self-regulatory initiative. The annual report shall be sent to the Commission within reasonable time limits, allowing for its subsequent assessment by the members of the Consultation Forum.
- d) Member States wishing to verify the reported information are granted access on demand to the background data and on that basis can perform random products checks/tests.
- e) The Commission, assisted by the Committee on the Ecodesign of Energy-related Products (in its advisory capacity), will, in the light of the reports submitted and other information consider whether the objectives of the self-regulatory initiative are met.

If, after consultation, the Commission considers that the recognised self-regulatory initiative failed to achieve its objectives it can consider proposing Ecodesign implementing measures.

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