

**Guidelines on self-regulation measures concluded by industry  
under the Ecodesign Directive 2009/125/EC**

**TABLE OF CONTENTS**

1. OBJECTIVE OF THE GUIDELINES .....	2
2. ROLE AND NATURE OF ECODESIGN SELF-REGULATION MEASURES.....	2
3. LEGAL FRAMEWORK OF ECODESIGN SELF-REGULATION MEASURES.....	2
4. RECOGNITION OF ECODESIGN SELF-REGULATION MEASURES .....	5
5. ELEMENTS AND STRUCTURE OF ECODESIGN SELF-REGULATION MEASURES.....	6
5.1. Introduction .....	7
5.2. Objectives .....	7
5.3. Signatories and market coverage .....	7
5.4. Scope .....	9
5.5. Requirements .....	9
5.6. Independent Inspector .....	10
5.7. Compliance verification .....	11
5.7.1. Document checking .....	11
5.7.2. Product testing .....	13
5.7.3. Inspections .....	13
5.8. Compliance reporting .....	14
5.9. Monitoring the effectiveness of the self-regulation measure .....	15
5.10. Access to background data .....	16
5.11. Management of the self-regulation measure .....	17
5.12. Transparency .....	19
5.13. Voluntary withdrawal of a signatory .....	20
5.14. Exclusion of a non-compliant signatory .....	20
5.15. Revision of the self-regulation measure .....	21
5.16. Withdrawal of the recognition of the self-regulation measure by the Commission.....	22
5.17. Cooperation with the signatories to other self-regulation measures .....	22
5.18. Technical annex(es).....	22

## **1. OBJECTIVE OF THE GUIDELINES**

The 'Guidelines on self-regulation measures concluded by industry under the Ecodesign Directive 2009/125/EC' ('the Guidelines') is an explanatory document prepared by the European Commission services ('the Commission') and discussed with Member States and stakeholders gathered in the Consultation Forum established under Article 18 of Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy related products ('the Directive').

The provisions for voluntary agreements or other self-regulation measures are set out in Article 17 of the Directive and Annex VIII of the Directive. Only the text of the Directive 2009/125/EC is legally binding and is applicable in the Member States of the European Union.

These Guidelines aim at:

- Explaining the legal framework applying to ecodesign self-regulation measures;
- Facilitating the establishment and implementation of the self-regulation measures,
- Ensuring consistency in their structure and in their content; and
- Ensuring uniform interpretation of the applicable principles and rules.

All future ecodesign self-regulation measures should be drafted in line with these Guidelines. Furthermore, all existing ecodesign self-regulation measures should be aligned with the Guidelines as soon as possible but at the latest with the next revision of the measure.

The Commission will also use the Guidelines in the process of assessing proposals for self-regulation measures to be recognised as valid alternatives to implementing measures under the Directive.

## **2. ROLE AND NATURE OF ECODESIGN SELF-REGULATION MEASURES**

Industry may use self-regulation measures to lay down ecodesign requirements for products placed on the EU market and/or put into service, provided that these measures meet the relevant criteria as indicated further in this document.

An ecodesign self-regulation measure that meets all the conditions specified in the Directive is considered as a valid alternative to an ecodesign mandatory implementing measure (i.e. a Commission Regulation). Consequently, as long as such a self-regulation measure meets its objectives and complies with the requirements of the Directive, the Commission will refrain from adopting an ecodesign implementing measure. However, if the monitoring and reporting performed under the self-regulation measure, or input from stakeholders indicate deficiencies in the functioning of such a measure, the Commission will reassess the measure and, if appropriate, report to the Council and the European Parliament proposing a mandatory ecodesign implementing measure.

## **3. LEGAL FRAMEWORK OF ECODESIGN SELF-REGULATION MEASURES**

Product groups which meet the criteria laid down in Article 15(2) of the Directive should be covered by either a mandatory implementing measure (i.e. a Commission Regulation)

or a self-regulation measure (e.g. a voluntary agreement concluded by industry). The Directive itself and the Ecodesign Working Plans adopted by the Commission list product groups which meet these criteria and thus have priority for preparatory studies and adoption of the measures.

Recital 18 of the Directive encourages the Commission to give priority to self-regulation measures over mandatory measures, if the former is likely to deliver the policy objectives faster or in a less costly manner than the latter. As explained in Recital 19 of the Directive, self-regulation measures can enable quick progress due to rapid and cost-effective implementation and can allow for flexible and appropriate adaptations to technological options and market sensitivities. Subsequently, recital 20 lists the main requirements for the assessment of self-regulation measures and in particular: openness of participation, added value, representativeness, quantified and staged objectives, involvement of civil society, monitoring and reporting, administrative cost-effectiveness and sustainability.

The self-regulation measure can be presented by its signatories as an alternative to an implementing measure. According to Article 17 of the Directive, such measures must be assessed at least on the basis of and must comply with the criteria specified in Annex VIII to the Directive:

- A. All provisions of the Treaty (in particular internal market and competition rules);
- B. International engagements of the EU (including multilateral trade rules); and
- C. Nine specific and non-exhaustive criteria:

- 1. Openness of participation

*'Self-regulatory initiatives must be open to the participation of third country operators, both in the preparatory and in the implementation phases.'*

Additionally, at any time, other companies active on the same product market must be able to join the self-regulation initiative, participating in its operational costs.

- 2. Added value

*'Self-regulatory initiatives must deliver added value (more than 'business as usual') in terms of the improved overall environmental performance of the product covered.'*

The rule of 'added value' should apply to significant environmental aspects. The VA should include, where relevant, product life-cycle environmental targets, including non-energy ones otherwise difficult to obtain had a Regulation been implemented.

- 3. Representativeness

*'Industry and their associations taking part in a self-regulatory action must represent a large majority of the relevant economic sector, with as few exceptions as possible. Care must be taken to ensure respect for competition rules.'*

A "large majority" is represented by at least 80% of the total sales, in units sold, of the products covered by the scope of the measure placed on the EU market.

#### 4. Quantified and staged objectives

*'The objectives defined by the stakeholders must be set in clear and unambiguous terms, starting from a well-defined baseline. If the self-regulatory initiative covers a long time-span, interim targets must be included. It must be possible to monitor compliance with objectives and (interim) targets in an affordable and credible way using clear and reliable indicators. Research information and scientific and technological background data must facilitate the development of these indicators.'*

#### 5. Involvement of civil society

*'With a view to ensuring transparency, self-regulatory initiatives must be publicised, including through the use of the Internet and other electronic means of disseminating information. The same must apply to interim and final monitoring reports. Stakeholders including Member States, industry, environmental NGOs and consumers' associations must be invited to comment on a self-regulatory initiative.'*

The signatories should create and maintain a website dedicated to this initiative, publishing its text and all other relevant documents. Furthermore, all stakeholders (including industry, national authorities of the EU Member States and EFTA/EEA countries as well as consumer and environmental non-governmental organisations) must be fully involved.

#### 6. Monitoring and reporting

*'Self-regulatory initiatives must contain a well-designed monitoring system, with clearly identified responsibilities for industry and independent inspectors. The Commission services, in partnership with the parties to the self-regulatory initiative, must be invited to monitor the achievement of the objectives. The plan for monitoring and reporting must be detailed, transparent and objective. It must remain for the Commission services, assisted by the Committee referred to in Article 19(1), to consider whether the objectives of the voluntary agreement or other self-regulatory measures have been met.'*

#### 7. Cost-effectiveness of administering a self-regulatory initiative

*'The cost of administering self-regulatory initiatives, in particular as regards monitoring, must not lead to a disproportionate administrative burden, as compared to their objectives and to other available policy instruments.'*

#### 8. Sustainability

*'Self-regulatory initiatives must respond to the policy objectives of this Directive, including the integrated approach, and must be consistent with the economic and social dimensions of sustainable development. The protection of the interests of consumers, health, quality of life and economic interests, must be integrated.'*

#### 9. Incentive compatibility

*'Self-regulatory initiatives are unlikely to deliver the expected results if other factors and incentives — market pressure, taxes, and legislation at national level — send contradictory signals to participants in the self-regulatory initiative. Policy*

*consistency is essential in this regard and must be taken into consideration when assessing the effectiveness of the initiative.'*

Article 15 states that, in drafting an implementing measure, the Commission shall take into account a self-regulation proposal if its assessment in accordance with the criteria above mentioned provides reasonable evidence that policy objectives may be achieved more quickly or at lesser expense than mandatory requirements. The different options for implementing measures, consequently need to be compared in the impact assessment, requiring the presentation of a self-regulation proposal before the Consultation Forum. Companies can provide the Commission with a draft proposal for a self-regulation measure already before or during a preparatory study.

Finally, Article 18 of the Directive stipulates that the Consultation Forum established under the Directive is to contribute to assessing voluntary agreements and other self-regulation measures.

Consequently, industry's proposal for the self-regulation measure that is expected to constitute an alternative to an implementing measure must be submitted for comments to the Consultation Forum, accompanied by an explanatory note thoroughly explaining the reasons why such a proposal would meet the Ecodesign objectives more quickly or at a lesser expense than mandatory requirements<sup>1</sup> and by supporting, third-party data and/or scientific information. Following the Consultation Forum meeting, the proposal may have to be modified to take into account comments received from the Commission and stakeholders. This improved proposal would constitute one of the options to be considered in the impact assessment for an implementing measure.

#### **4. RECOGNITION OF ECODESIGN SELF-REGULATION MEASURES**

Taking into account the opinion of the Consultation Forum and its own assessment, the Commission may recognise the self-regulation measure as a valid alternative to an implementing measure and consequently should abstain from introducing an implementing measure on the product group covered by the former if all the following conditions are met:

1. the signatories to the self-regulation measure propose that their initiative is considered as an alternative to an implementing measure;
2. the self-regulation measure is likely to deliver the policy objectives more quickly and at lesser expense than mandatory requirements;
3. the self-regulation measure complies with all provisions of the Treaty, international engagements of the EU, the nine specific criteria listed in Annex VIII to the Directive and other assessment criteria, including those included in the present Guidelines.

The Commission may recognise an ecodesign self-regulation measure as a valid alternative to an implementing measure by adopting a Commission Report to the European Parliament and to the Council (non-legislative act; 'the Report').

If so, in the Report the Commission will inform the two Institutions of the reasons for which it has decided to abstain from establishing mandatory ecodesign requirements for

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<sup>1</sup> As referred to in Article 3(b) of the Ecodesign Regulation

the product group covered by the self-regulation measure. Furthermore, the Commission will inform them of its intention to constantly monitor the application of the recognised self-regulation measure.

The Commission will publish the Report, together with the text of the self-regulation measure and other relevant accompanying documents, on the Europa website. The Report must also be published on the website of the self-regulation measure.

Adoption of an ecodesign self-regulation measure or its recognition by the Commission does not preclude the possibility for the Commission to run preparatory studies or to adopt measures under other policy instruments (e.g. Energy Label, Ecolabel) for the product group in question.

## **5. ELEMENTS AND STRUCTURE OF ECODESIGN SELF-REGULATION MEASURES**

Any ecodesign self-regulation measure concluded by industry must contain rules that will regulate its operation. These rules must respect the principles and rules specified in the Directive and in these Guidelines. A specific self-regulation measure may provide additional and/or more detailed rules to the rules laid down in the Guidelines which must not, however, contradict or modify the latter.

To ensure homogeneity between all self-regulation measures recognised under the Directive and to facilitate interpretation and application, the self-regulation measure should be drafted with the following chapters:

1. Introduction
2. Objectives
3. Signatories and market coverage
4. Scope
5. Requirements
6. Independent Inspector
7. Compliance verification
8. Compliance reporting
9. Monitoring of the effectiveness of the self-regulation measure
10. Access to background data
11. Management of the self-regulation measure
12. Transparency
13. Voluntary withdrawal of a signatory
14. Exclusion of a non-compliant signatory
15. Revision of the self-regulation measure
16. Withdrawal of the recognition of the self-regulation measure by the Commission
17. Cooperation with the signatories to other self-regulation measures
18. Technical annex(es)

## **5.1. Introduction**

An introduction should summarise the context and the content of the self-regulation measure.

## **5.2. Objectives**

The self-regulation measure must clearly state its objectives. The objectives of the self-regulation measure must remain, throughout the whole period of its application, coherent with the objectives of the Directive, i.e. the reduction of environmental impacts of energy-related products over their life cycle and the achievement of energy savings through better design.

The self-regulation measure must clearly state that its signatories present this measure as an alternative to a mandatory implementing measure and that the Commission is to assess it against the relevant criteria, including those specified in the Directive.

The self-regulation measure must clearly state how it is compliant with the principles and criteria laid down in the Directive (including, with details, the assessment criteria listed in Annex VIII to the Directive) and with the rules laid down in these Guidelines.

The self-regulation measure must clearly state the date of the entry into force of the requirements laid down in the measure.

## **5.3. Signatories and market coverage**

The self-regulation measure must contain an updated list of the companies who have joined the measure<sup>2</sup>. These companies are to be considered the signatories to the self-regulation measure.

If signatories or part of them have concluded a separate agreement or association of any kind in relation with the objectives of the self-regulation, all relevant documents related to the agreement or association have to be mentioned and be publicly available.

The self-regulation measure must clearly state the market coverage of its current signatories. Only self-regulatory initiatives with coverage of at least 80% of the products placed on the market and/or put into service can be considered as valid ecodesign self-regulation measures.

The signatories must commission a report (to be prepared by an independent body) proving the market coverage of the self-regulation measure of at least 80%:

- before proposing the self-regulation measure, with results updated to at least six months before;
- within forty five days following any change of the signatories (e.g. after a withdrawal or selling off a relevant division to a non-signatory, etc.), if the

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<sup>2</sup> Start date and end date (if any).

overall market coverage is expected to decrease below the minimal threshold of 80% and

- every two years, to update the coverage as result of entry into the market of new companies who are not signatories, and to reflect changes in the market, production strategy or portfolio of products of any of the signatories.

The signatories to the existing recognised self-regulation measure shall commission a report proving the market coverage of the measure of at least 80% within twelve months following the adoption of the Guidelines.

In the case of a change of the signatories, the report must be delivered to the Commission and must be made publicly available, including through the website of the measure within 45 days following the commissioning of the report.

In the case of the change of the signatories, the signatories do not have to commission the report provided that the most recently commissioned report undoubtedly shows that the withdrawing signatory(ies) accounted for a small market share and that after the withdrawal the market coverage will remain well above 80%.

The membership form to be completed and signed by a company wishing to become a signatory must be attached to the self-regulation measure.

The Commission shall be informed of any formal or informal request to become or cease to be a signatory of the self-regulation. The signatories must without unnecessary delay submit to the Commission originals of the completed and signed membership forms.

The self-regulation measure must define the precise indicator(s) used to assess the market coverage claimed for products made available or put into service on the EU market<sup>3</sup>. The indicators must be objective, measurable and verifiable by an independent body.

Referring to the general objective of any self-regulation measure in the context of the Directive, the indicators need to cover all energy related product categories covered by the measure. Suitable indicators may include:

- percentage of market saturation level in terms of units, with a weighting correction factor in case of multiple Energy-related Products (ErPs) covered;
- percentage of market saturation level in terms of value, with a weighting correction factor in case of multiple ErPs covered;
- percentage of sales turnover, if certifiable for the different ErP involved, but excluding any other not part of the self-regulation measure;
- a count of active retail and/or service providers selling/providing/renting the specific products, including by e-commerce, if quotas of customers or products share can be easily demonstrated to cover the minimal required.

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<sup>3</sup> The "Blue Guide" on the implementation of EU product rules details how "making available" on the market and "putting into service" have to be interpreted (<http://ec.europa.eu/DocsRoom/documents/4942/>)



## **5.4. Scope**

The self-regulation measure must clearly define the scope of its application.

The self-regulation measure must list all types of products covered by its scope, must provide their definitions and must list the types of products that belong to the product group subject to the self-regulation measure but are exempted from its requirements. Justifications for exemption of products from the scope of the self-regulation measure have to be provided.

The market coverage estimation has to include all products covered by the scope of the self-regulation measure, including consumables, where applicable, unless the consumable characteristics and requirements are covered by standards (used by the products), or their cost/value, in the product life cycle, is negligible. To this extent, as stated in recital 32 of the Directive, the use of "harmonised standards could contribute considerably to guiding manufacturers in establishing the ecological profile of their products".

The self-regulation measure must clearly state that its requirements apply to at least 90% of all units (in terms of number of units) covered by the self-regulation measure placed on the market and/or put into service by each signatory and should set a target of 100% of models compliance within a determined timeline (tier 2 or tier 3): this would facilitate the compliance checking activity, once the 100% target is attained, reducing compliance checking costs. A very limited number of models with specific energy- and/or resource-intensive requirements may be foreseen with specific allowances, if representing not more than 10% of units placed on the market and/or put into service.

## **5.5. Requirements**

The self-regulation measure must clearly lay down the requirements that will aim at improving the environmental performance of the products covered by its scope, by reducing energy consumption of those products and, where appropriate, the requirements on other significant environmental aspects of these products.

The self-regulation measure must lay down the requirements for all signatories to the measures. There cannot be a signatory without obligations laid down in the measure.

The requirements must be listed in precisely specified tiers. At least two tiers must be proposed. Under each tier, the requirements must be presented distinguishing:

- ecodesign requirements (energy- and resource-efficiency); and
- information requirements.

Each self-regulation measure must contain a review clause (mentioning the review date) allowing for review of all its essential elements (see paragraph 5.15).

It must be possible to measure requirements through clear and reliable indicators, and for an Independent Inspector to monitor the compliance of the signatories with the self-regulation measure based on those indicators.

The self-regulation measure must specify an existing study (e.g. a preparatory study run under the Directive, third-party data and/or scientific information), initiative or project on which the proposed requirements are based. All major differences between requirements proposed in the self-regulation measure and scenarios and requirements in that study, initiative or project must be highlighted.

## **5.6. Independent Inspector**

The self-regulation measure must clearly state the rules applicable to an Independent Inspector to be appointed.

As a guarantee for impartiality, objectiveness and independence, as stated in recital 28 of the Directive, the Independent Inspector is designated by the Commission, possessing the necessary expertise for carrying out the necessary verifications of the products with regard to their compliance with the self-regulation requirements. The signatories may provide, by consensus, one or more proposals for an Independent Inspector.

The Steering Committee is involved in the selection criteria, process, contract terms and conditions, and in particular has access to the documentation relevant for the appointment of the Independent Inspector.

The Independent inspector is responsible for:

- checking of and reporting on the compliance of the signatories with the requirements of the self-regulation measure;
- independently selecting products and performing compliance testing;
- carrying out and reporting on the results of inspections.

The self-regulation measure must entitle the Independent Inspector to carry out all activities needed to complete the above mentioned tasks, and at least:

- to collect and to process market and technical data provided by the signatories<sup>4</sup>;
- to make the products to test available or to reimburse the cost for acquiring them<sup>5</sup>;
- to prepare compliance reports;
- to carry out inspections and draft the reports;
- Any testing activities need to be carried out by an accredited laboratory<sup>6</sup>.

Contractual obligations of the Independent Inspector must not prevent or limit activities of the latter related to the compliance verification activity.

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<sup>4</sup> The data to be communicated to the II can be listed in the self-regulation (as annex)

<sup>5</sup> Pre-determining a maximum number of tests to be performed has to be avoided if this could give to some signatories a certainty of no control during a specific time-range and/or on a product group.

<sup>6</sup> Testing activities may be performed in the premises of one of the signatories, provided that full objectiveness and data confidentiality for non-measured and non-disclosed verification data is assured.

Furthermore, the chosen Independent Inspector is to:

- observe confidentiality, where necessary, in order to protect commercial secrets or to preserve sensitive data of a signatory. The Independent Inspector should sign a 'Nondisclosure Agreement' with the signatories to the self-regulation measure, if requested;
- be impartial in all its actions and base its opinions and reports only on the facts;
- interpret applicable rules and figures in a truthful and sincere manner;
- be free of conflicts of interest and not have any business or other relevant relationship with the signatories or at least disclose such relationship;
- perform its tasks with due care and supervise adequately all performed tasks for which it will be responsible.

The signatories to the self-regulation measure are to bear all costs of the Independent Inspector and of necessary testing activities.

Information about the Independent Inspector chosen for the self-regulation measure should be published on the dedicated website within thirty days following its appointment.

## **5.7. Compliance verification**

The self-regulation measure must entitle the Independent Inspector to verify compliance with the requirements of the self-regulation measure. This can be done by means of:

- document checking;
- product testing; and/or
- inspections in the premises of a signatory.

The Independent Inspector should decide on an appropriate mix of these verification activities.

### *5.7.1. Document checking*

Document checking involves the collection and check of the documentation provided by signatories.

The self-regulation measure must lay down rules to regulate at least the following aspects on the documentation to be submitted by each signatory:

- scope of the documentation obligations;
- type of market and technical data to be reported;
- format of the data to be submitted;
- the means of transmitting documentation to the Independent Inspector;
- frequency and timing of the documentation to be submitted.

A signatory which has not in any way responded by [28 February] to the requests for information sent by the Independent Inspector, or which has not provided to the latter all information required to assess its compliance and to produce the report within given deadlines, must be considered a 'non-compliant signatory'.

The signatories together with the Independent Inspector can discuss and agree on further practicalities of the reporting under the self-regulation measure. The Chair must inform the members and the observers to the Steering Committee about the discussions and decisions with regard to this aspect.

***Scope of the reporting obligations:*** The scope of the reporting obligations of a signatory must reflect the scope of its commitments and responsibilities laid down in the self-regulation measure. As commitments and responsibilities under the self-regulation measure may be different for various signatories (as a result of their different positions and roles in the distribution chain) also the scope of their reporting obligations may vary.

***Type of market and technical data to be reported:*** Each signatory is obliged to report all information and data (including market data and data on the environmental performance of products) that is necessary for the Independent Inspector to verify in a reliable way the compliance of that signatory with all the commitments undertaken in the measure.

The signatories must provide market data allowing the Independent Inspector to assess that at least 90% of their products comply with the commitments. Should the signatories commit that 100% of their products comply with their commitments, they are not required to provide specific market data to the Independent Inspector.

The reporting must be performed for every model covered by the self-regulation measure that is placed on the EU market and/or put into service. If the different models do not differ in aspects covered by the specific self-regulation measure (i.e. any aspect related to energy/resource efficiency), the reporting can include all similar models in an aggregated way, provided that the aggregation is indicated. The Independent Inspector in agreement with the Steering Committee (consensus) and taking into account the opinion of the Consultation Forum is to decide on the exact data to be reported. The information and data reported by the signatories may be different only following the differences in their commitments.

***Format of the data to be submitted:*** The format of the data to be submitted to the Independent Inspector must be the same for all signatories. The Independent Inspector together with the signatories is to decide on the exact format in which the data must be reported.

***The means of transmitting documentation to the Independent Inspector:*** The means should take utmost advantage of electronic means of communication, having regard to confidentiality requirements and to the burden for both parties involved.

***Frequency and timing of the documentation to be submitted:*** The signatories must report to the Independent Inspector for the relevant reporting period. Each reporting period must last one year.

Each signatory must provide to the Independent Inspector all required information in the agreed format within two months of the year following the reporting period. Additional requests by the Independent Inspector for providing missing information, if any, after the deadline must be honoured within a very short deadline<sup>7</sup>.

#### *5.7.2. Product testing*

Testing involves checks of the characteristics of products covered by the self-regulation measure on an adequate scale, by means of physical tests performed in independent laboratories or, only when not possible, in the premises of the signatories.

The independent Inspector should randomly select adequate samples of products from different signatories, preferably acquiring them from different retailers in different EU Member States<sup>8</sup>. For products provided directly by signatories they shall not participate in the process of selecting samples of products to be subject to checks and tests to assure random selection.

The Independent Inspector may require the signatories to make specific documentation and information available if missing in the documentation provided with the products and required for the purpose of carrying out its testing activities.

The Independent Inspector must inform the Commission of the products selected for testing.

Information in the testing report should be detailed for each individual product tested and presented to the members of the Steering Committee. The list of tested products and summarised individual results is made public.

#### *5.7.3. Inspections*

The Independent Inspector may run an inspection of a specific signatory if he concludes that specific information received by any source<sup>9</sup>, or lack of it, justifies such inspection. The specific information or lack of it justifying an inspection must be disclosed to the inspected signatory. The Independent Inspector must inform the Commission of the signatories chosen for inspection and of the reasons for doing so.

An inspection should only cover the commitments stemming from the self-regulation measure if no other more cost-effective mean is possible.

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<sup>7</sup> To be indicated in the specific self-regulation text

<sup>8</sup> Whether in physical or electronic shops

<sup>9</sup> Including a competitor or any external reputable source

During an inspection, the Independent Inspector is to take only those actions that are strictly necessary for checking the compliance of the signatory with the commitments undertaken in the self-regulation measure.

The Independent Inspector must inform the signatory about its inspection with short notice. The signatory shall not actively participate in the activities undertaken by the Independent Inspector but must provide the requested support.

The Independent Inspector must send to the inspected signatory, for comments, a draft of the inspection report within thirty days following the closure of the procedure.

The signatory is to provide its comments within two weeks of the receipt of the draft report. The Independent Inspector must, within two weeks, modify, where appropriate, the draft report following comments received from the signatory.

The Independent Inspector must submit to all members of the Steering Committee a summary of the performed controls conducted to that date and present it at the first meeting of the Steering Committee held after the end of the control activities. The summary should not disclose individual sensitive information, unless clearly and strictly related to proof of non-compliance.

A signatory which, according to the inspection report of the Independent Inspector, has not complied with the requirements of the self-regulation measure or which has not provided to the latter all information required to assess its compliance and to produce the report within the given deadlines must be considered a 'non-compliant signatory'. The signatory may be given additional time to comply, not exceeding 6 months.

The number of inspections to be performed in a given year must take into account the number of the signatories declaring less than 100% of compliant products and should not be less than 10% of not fully compliant signatories and not more than 25% with a minimum of 1.

The signatories together with the Commission and the Independent Inspector can discuss and agree on further practicalities of inspection. The chair must inform the members and observers to the Steering Committee about discussions and decisions with regard to this aspect.

## **5.8. Compliance reporting**

The Independent Inspector must prepare the draft compliance report and send it to the members of the Steering Committee and interested observers by 31 March of the year following the reporting period.

The members of the Steering Committee are entitled to submit their comments on the draft compliance report within 15 days.

The Independent Inspector must submit the final version of the compliance report to the members of the Steering Committee by 30 April of the year following the reporting period.

The content of the compliance reports produced by Independent Inspectors may vary under different self-regulation measures but should include the following information:

- contact details of the Independent Inspector;
- authors of the report;
- date of the report and the reporting period;
- summary of the results presented in the report;
- list of the signatories subject to the reporting obligations;
- list of the commitments and requirements on which the signatories had to report in the given reporting period;
- information about the applied data collection and processing method;
- information about the (non)compliance of each signatory with its commitments undertaken in the self-regulation measure;
- information about the reasons of any non-compliance;
- summary (including results) of the tests and other controls performed in the reporting period;
- challenges in preparing the report and in particular in collecting and processing data provided by the signatories;
- recommendations for the next reporting periods;
- reporting form agreed with the signatories and used in the process;
- list of the compliant and non-compliant signatories;
- list of the compliant models covered by the self-regulation measure.

A signatory which, according to the report of the Independent Inspector, has not complied with the requirements of the self-regulation measure must be considered a 'non-compliant signatory'.

Information in the compliance report must be presented both in aggregated form, summarising results for all the signatories to the self-regulation measure and detailed for each individual signatory. The former is made publicly available, whilst the latter is only made available to the interested signatory and to the Commission.

## **5.9. Monitoring the effectiveness of the self-regulation measure**

The self-regulation measure must lay down rules on monitoring.

The rules must allow the Commission and stakeholders to effectively monitor the effectiveness of existing or of proposed new self-regulation measures.

The Commission assisted by the Consultation Forum and the Committee referred to in Article 19(1) of the Ecodesign Directive is to monitor the application of the self-

regulation measure, and in particular its compliance with the general principles laid down in the Directive, including in its Annex VIII and in the Guidelines, and the appropriateness of the proposed requirements.

The Commission is to decide whether the self-regulation measure meets or continues meeting its objectives by taking into account the criteria laid down in the Directive, including:

- the experienced openness of participation and representativeness;
- the verified added value;
- the sufficient involvement of the civil society;
- the cost-effectiveness of administering a self-regulatory initiative and its sustainability;
- the experienced flexibility and capacity of adaptation to technological progress or market sensitivities;
- the type and ambition of the proposed requirements (added value<sup>10</sup>);
- the scope of application of the measure;
- the market coverage;
- the appropriateness of the proposed rules on reporting and monitoring;
- the compliance of the signatories with the requirements (on the basis of the compliance reports and audit reports produced by the Independent Inspector).

The Commission may hold meetings of the Consultation Forum to discuss with stakeholders the application of the self-regulation measure.

#### **5.10. Access to background data**

The self-regulation measure must clearly state the rules on access to background data.

The self-regulation measure must include a requirement on the signatories to provide stakeholders (including the Commission, national authorities and non-governmental organisations) with access to technical data on the environmental performance of products/models covered by the measure. The purpose of this provision is to enable all stakeholders to properly assess the level of ambition and impact of the newly proposed and to-be-reviewed/revised self-regulation measures. The Steering Committee may decide to provide the background data to stakeholders also for other purposes.

In principle, all relevant stakeholders must have access to the technical data concerning all main parameters of the environmental performance of the products covered by the self-regulation measure and all aspects for which allowances have been granted or requested. The scope of the background data granted to stakeholders must reflect requirements (to be) laid down in the self-regulation measure.

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<sup>10</sup> The ambition should be comparable to a Regulation, i.e. by assuring that 10-20% of products currently in the market are retired and/or assuring relevant non-energy targets, otherwise difficult to attain via an ecodesign measure.



The rules on access to background data need not apply to commercially sensitive market data.

The signatories together with the Commission and the observers to the Steering Committee are to agree on practicalities of access to background data and in particular on the following aspects:

- type of technical data to be made available;
- format in which the data must be made available;
- frequency and timing of providing the information.

The Chair must inform the members and observers to the Steering Committee about the discussions and decisions with regard to this aspect of the measure. This information must be recorded in the minutes of the Steering Committee meeting and must be made available on the website of the measure.

The Steering Committee may decide to convene a working group to perform this task.

#### **5.11. Management of the self-regulation measure**

The self-regulation measure must establish a Steering Committee that will manage the operation of the measure.

The Steering Committee must consist of all signatories to the self-regulation measure and the Commission. Each signatory and the Commission must nominate one person to represent it in the Steering Committee. The representatives of the signatories and the Commission are each to have the status of a member of the Steering Committee. All members of the Steering Committee must be treated equally and there must be no special arrangements made for selected members.

The Steering Committee must elect from among its members a Chair for a period of two years. The Chair can be re-elected once. The members of the Steering Committee can shorten or end the term of the Chair at any time. The Chair is to be responsible for representing the self-regulation measure, convening the Steering Committee meetings, running these meetings and drafting minutes of the meetings.

Steering Committee meetings must be held at least twice per calendar year, including once in Brussels. Participation to the Steering Committee meeting can be allowed by means of video/audio conferencing, provided that the connection capacity is sufficient to enable participation of all interested members of the Steering Committee and Consultation Forum. Physical presence in the meeting venue of the Chair, of the delegate to take the minutes and of the Commission representative is required.

The Steering Committee meetings are to be convened by the Chair. Any member of the Steering Committee may request the Chair to convene a meeting of the Steering Committee.

The Chair must convene a Steering Committee meeting whenever any of the conditions justifying the termination of the self-regulation measure mentioned in points b) or c) of chapter 4.15 of the Guidelines occur. The meeting must be

convened within thirty days of the receipt by the Chair of the information about the condition justifying the termination of the self-regulation measure.

The Chair should try to avoid convening the Steering Committee meetings overlapping with meetings related to ecodesign and energy labelling, e.g. Consultation Forum meetings or ecodesign and energy labelling Administrative Cooperation (ADCO) and Working Group meetings, are scheduled.

The Chair must prepare the draft agenda of the Steering Committee meeting. The Chair must include in the draft agenda all points proposed by the members of the Steering Committee and, where relevant, all points proposed by the observers. Invitations to the Steering Committee meeting must be sent to all members of the Steering Committee and to all members of the Consultation Forum. An announcement of the Steering Committee meeting, including the provisional agenda, must be posted on the website of the self-regulation measure not later than thirty days in advance of the meeting. Requests for participation to the Steering Committee are evaluated by the Chair and the Commission taking into consideration the pertinence of the request.

Documents to be presented and discussed at the Steering Committee meeting must be sent to all members of the Steering Committee and of the Consultation Forum, and must be posted on the website of the self-regulation measure no later than 7 working days in advance of the meeting.

All members of and observers to the Steering Committee must have a right to take the floor at the Steering Committee meetings and to request the Chair to register their views in the minutes.

Minutes from the Steering Committee meeting must be prepared by the Chair, must be sent to all members of the Steering Committee and of the Consultation Forum and must be posted on the website of the self-regulation measure within thirty days of the meeting. The Chair must give the members and observers to the Steering Committee at least two weeks to submit comments on the minutes before their further distribution and final publication on the website.

The signatories must bear all expenses related to the operation of the Steering Committee, including testing activities in independent laboratories and inspection activity, except the costs of the representative of the Commission and the observers.

The Steering Committee may decide to convene a working group to carry out specific tasks required under the self-regulation measure. In this case, the Steering Committee, with the agreement of the Commission, must decide on the composition of the group, its specific tasks and the time frame of its operation. The working group may consist of the members and the observers to the Steering Committee may include external experts and must be required to report to the Steering Committee on the results of its work within a deadline specified by the Steering Committee.

The signatories may decide to contract an external company to provide administrative support in managing the self-regulation measure.

All decisions of the Steering Committee must be taken by consensus (at least 90% of all members). However, if despite reasonable efforts, no consensus can be achieved, the decision can be taken by a two-thirds majority of those present. For

any decision (taken by consensus or by a two-thirds majority) a quorum of at least two-thirds of the members of the Steering Committee is required. The draft agenda of the Steering Committee meeting must specify whether any decisions (particularly concerning the appointment of the Chair or the adoption of a new version of the self-regulation measure) are expected to be taken at the meeting.

The Steering Committee may adopt its rules of procedure, when necessary. These rules, however, must not be conflicting with these Guidelines.

## **5.12. Transparency**

### ***Meetings***

The meetings of the Steering Committee must be open to Member States of the EU, EFTA/EEA countries, the Independent Inspector, non-governmental organisations and other interested stakeholders, including companies from the sector covered by the self-regulation measure not being signatories to it. The representatives of these bodies are to have the status of observers to the Steering Committee. Requests of participation as an observer must be addressed to the Chair. Official Consultation Forum members do not need to request the participation.

### ***Website***

The signatories must establish a website dedicated to their self-regulation measure within six months of the recognition of the self-regulation measure by the Commission. The website must contain all information and data strictly relevant for the measure, including:

- the most recent version of the self-regulation text and previous ones;
- an updated list of the signatories;
- reports on the market coverage (aggregated information, without disclosure of individual signatories commercial and confidential data);
- for every Steering Committee meeting, invitations, draft agendas and minutes of Steering Committee meetings;
- summary versions of the compliance reports produced by the Independent Inspector;
- lists of compliant and non-compliant signatories, reviewed for every reporting period;
- lists of declared compliant products, reviewed for every reporting period and result of test, if done. Products that have also positively passed testing may be given particular visibility;
- information about the Independent Inspector.

The website must provide a possibility for visitors to submit questions about the self-regulation measure to the signatories and to the Independent Inspector. The signatories must bear all expenses related to the development and running of the website.

### **5.13. Voluntary withdrawal of a signatory**

The self-regulation measure must clearly state the rules on the voluntary withdrawal of a signatory from the measure.

The signatory to the self-regulation measure must be able to withdraw its participation in the measure at any time. Thirty days written notice, however, must be given to the Chair.

All rights and obligations of the signatory that withdraw its participation in the measure must cease after thirty days after the written notice.

The Chair must inform the Steering Committee of the voluntary withdrawal of a signatory within seven days of the receipt of the written notice.

Information about the withdrawal of the signatory must be recorded in the minutes of the first following Steering Committee meeting and must be posted on the website of the self-regulation measure.

The report foreseen in paragraph 5.3, to be produced in case of modification of the market coverage below the minimum established must be delivered to the Commission without unnecessary delay and must be posted on the website of the self-regulation measure. The signatories do not have to commission the report provided that the most recently commissioned report undoubtedly shows that the withdrawing signatory accounted for a small market share and thus after its withdrawal the market coverage will remain well above 80%.

If the voluntary withdrawal of the signatory results in the market coverage below required 80% and this situation continues for a period exceeding six months, starting from the moment of the termination of the rights and obligations of the withdrawn signatory, the Commission will withdraw its recognition and will consider adopting an Ecodesign implementing measure.

### **5.14. Exclusion of a non-compliant signatory**

The self-regulation measure must clearly state the rules on the exclusion of a non-compliant signatory from the measure.

A non-compliant signatory is a signatory that:

- a) has not complied with the requirements of the measure as reported in the compliance report and/or in the report produced by the Independent Inspector, or
- b) has not in any way responded by [28 February] to the requests for information required by the Independent Inspector to prepare the compliance report or has not provided to the latter all information required to assess its compliance and to produce the compliance or inspection report within given deadlines.

A non-compliant signatory must be subject to the inspection to be performed by the Independent Inspector in the next calendar year.

The participation in the agreement of a non-complaint signatory who for the second time, at any point of time in the duration of the self-regulation measure, meets the conditions defined in the above mentioned points a) and/or b) must be considered

withdrawn. Consequently, all rights and obligations of such a non-compliant signatory under the self-regulation measure must cease at the moment when he is found to meet the conditions mentioned in points a) and b).

The Chair must inform the Steering Committee, including in a written format, about the exclusion of the non-compliant signatory within seven days following the receipt of the information about the condition specified in the above mentioned points a) or b).

Information about the exclusion of the signatory must be recorded in the minutes of the following Steering Committee meeting and must be posted on the website of the self-regulation measure.

Within thirty days following the exclusion of the non-compliant signatory from the self-regulation measure, remaining signatories must commission a report proving the market coverage of at least 80% of the products placed on the market and/or put into service. This report must be delivered to the Commission and must be posted on the website of the self-regulation measure. The signatories do not have to commission the report provided that the most recently commissioned report undoubtedly shows that the excluded signatory accounted for a small market share and thus after its exclusion the market coverage will remain well above 80%.

If the exclusion of the non-compliant signatory results in the market coverage below required 80% and this situation continues for a period exceeding six months, starting from the moment of the termination of the rights and obligations of the excluded signatory, the Commission will withdraw its recognition and will consider adopting a regulation.

#### **5.15. Revision of the self-regulation measure**

The self-regulation measure must include a review clause.

The objective of the review process must be to assess every few years all essential elements of the self-regulation measure and in particular its requirements and to indicate whether a new version needs to be prepared.

When revising the self-regulation measure, the signatories must ensure that the policy objectives of the Directive are met and that the measure remains compliant with all the criteria specified in the Directive.

Conclusions of the review process and the proposal for the revised self-regulation measure (e.g. containing the new set of requirements) must be presented to the Consultation Forum. Following the Consultation Forum meeting, the signatories may have to further modify the proposal to take into account comments received from the Commission and stakeholders.

The review and revision process of the self-regulation measure should be open to the observers to the Steering Committee. Observers may submit comments in the review and revision process. However, only the signatories are to be entitled to vote on the proposal for the revised self-regulation measure.

In addition to the review and revision of the essential elements of the self-regulation measure, the members of the Steering Committee may propose amendments of non-essential elements (e.g. style changes, obvious mistakes).

In case an amendment of essential elements becomes necessary before the revision, the amendment need to be presented to the CF.

#### **5.16. Withdrawal of the recognition of the self-regulation measure by the Commission**

The self-regulation measure can be concluded for a specific period of time.

The Commission will withdraw its recognition of a self-regulation measure when one of the following situations occurs:

- the signatories have taken a decision to terminate the self-regulation measure;
- the market coverage of the self-regulation measure remains below the required 80% of the products placed on the market and/or put into service for a period exceeding six months;
- the existing recognised self-regulation measure does not ensure compliance with the required 80% market coverage within eighteen months after the adoption of the Guidelines;
- the self-regulation no longer meets the objectives and the general principles defined in the Directive.

The Commission will inform the Chair of its decision to withdraw the recognition of the self-regulation measure and will provide the reasons for this decision. Should the signatories decide to continue their cooperation in the framework of the measure, they cannot consider it anymore compliant with the requirements of the Directive and as an alternative to an implementing regulation.

The decision of the signatories to maintain the self-regulation measure does not prevent the Commission from adopting ecodesign and energy labelling regulations for the product group covered by the self-regulation measure.

The Commission will inform the Council and the European Parliament of its decision to withdraw the recognition of the self-regulation measure and will consider proposing mandatory ecodesign and energy labelling Regulations.

#### **5.17. Cooperation with the signatories to other self-regulation measures**

The self-regulation measure must encourage the signatories to share expertise, experience, information and best practice with the signatories to other ecodesign self-regulation measures and to promote ecodesign self-regulation initiatives among industry representatives.

#### **5.18. Technical annex(es)**

Technical requirements and measuring/verification details, for all different tiers, have to be listed in a technical annex.

