



The Current State of Co-Regulation and Self-Regulation in the Single Market



EESC pamphlet series

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Foreword



The information report unanimously adopted by the European Economic and Social Committee (EESC) early 2005 and which is behind this publication gave the first comprehensive picture of co-regulation and self-regulation in the single market.

The European Economic and Social Committee and its Single Market Observatory (SMO) have long taken an interest in these approaches, which affirm the role of civil society actors as driving forces in European integration. Numerous EESC opinions have supported them in a variety of areas. A code of conduct adopted by the Committee in October 2000 and intended to assist the simplification process included a commitment to promote them. Co-regulation and self-regulation have been the subject of four hearings held in recent years by the SMO, which have directly contributed to the drafting of this information report.

These alternative methods of regulation have recently developed at European level and have taken many forms, such as commitments, declarations, charters, labels, codes of conduct and contractual agreements. 60% of professional associations stated that they were involved, and half of the remaining 40% expected to be involved in the future.

These developments have taken in a number of areas. The first is European technical standards. Then there are the professional codes of conduct, for example in the service industries. Agreements between the social partners – at both sectoral and intersectoral level – have increased since the Maastricht Treaty recognised their contractual role. These alternative approaches have also involved business, financial services, advertising, consumers, the environment and energy saving.

It now remains to make the most of their advantages by allowing greater scope for freedom and improving information about them, while compensating for their shortcomings by encouraging rigorous monitoring and improved partnership with public authorities. This would be to everybody's benefit. Public authorities could refocus their efforts to better effect whilst retaining a monitoring role. Enterprises and social and professional players would take more initiatives and responsibilities. Consumers and users would benefit from better services and enhanced protection, as well as having access to simpler modes of dispute resolution. As for European integration, it would benefit from the greater dynamism brought by the direct involvement of civil society actors.

The time has come for social and professional players to make Europe their business!

Bruno VEVER
Brussels, March 2005

Background

Background

Co-regulation and self-regulation in Europe have evolved significantly in recent years, although the concept remains little understood, even in social and economic circles. This development, which the European Economic and Social Committee has always supported, has for a long time needed a recognised European statute.

The social policy provisions of the Maastricht Treaty and then, more comprehensively, the Commission White Paper on European Governance and lastly the 2003 inter-institutional agreement "better lawmaking" have given co-regulation and self-regulation a role, as a complement to the regulations and directives laid down by the legislator. This framework will provide a boost for practices that are crucial to the completion of the single market, having already proved their effectiveness in a number of fields, such as technical standards, professional rules, social dialogue, services, consumers, and the environment.

Initiatives for co-regulation and self-regulation have taken many forms, such as codes of conduct, declarations, charters, agreements, rules, standards and labels. Their links with regulations are also extremely diverse, ranging from legally compatible autonomy, to requirements laid down in the wake of framework legislation (co-regulation) or even the local definition of rules then supported or even made mandatory by the legislator. Alternative methods of settling disputes have also developed in parallel with these alternative methods of regulation.

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. Similar comments could be made about alternative methods of settling disputes.

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.

Greater emphasis should now be given to regulatory freedom; good practice in these fields should be better publicised; and consultation with public authorities should be improved. Greater freedom for co-regulation and self-regulation will in future be in proportion to the sense of responsibility shown by those involved and to the effectiveness of their regulations for all users. The European Economic and Social Committee would like to contribute to this and will therefore continue to develop its observations and its discussions on the matter.

The institutional dimension

The institutional dimension

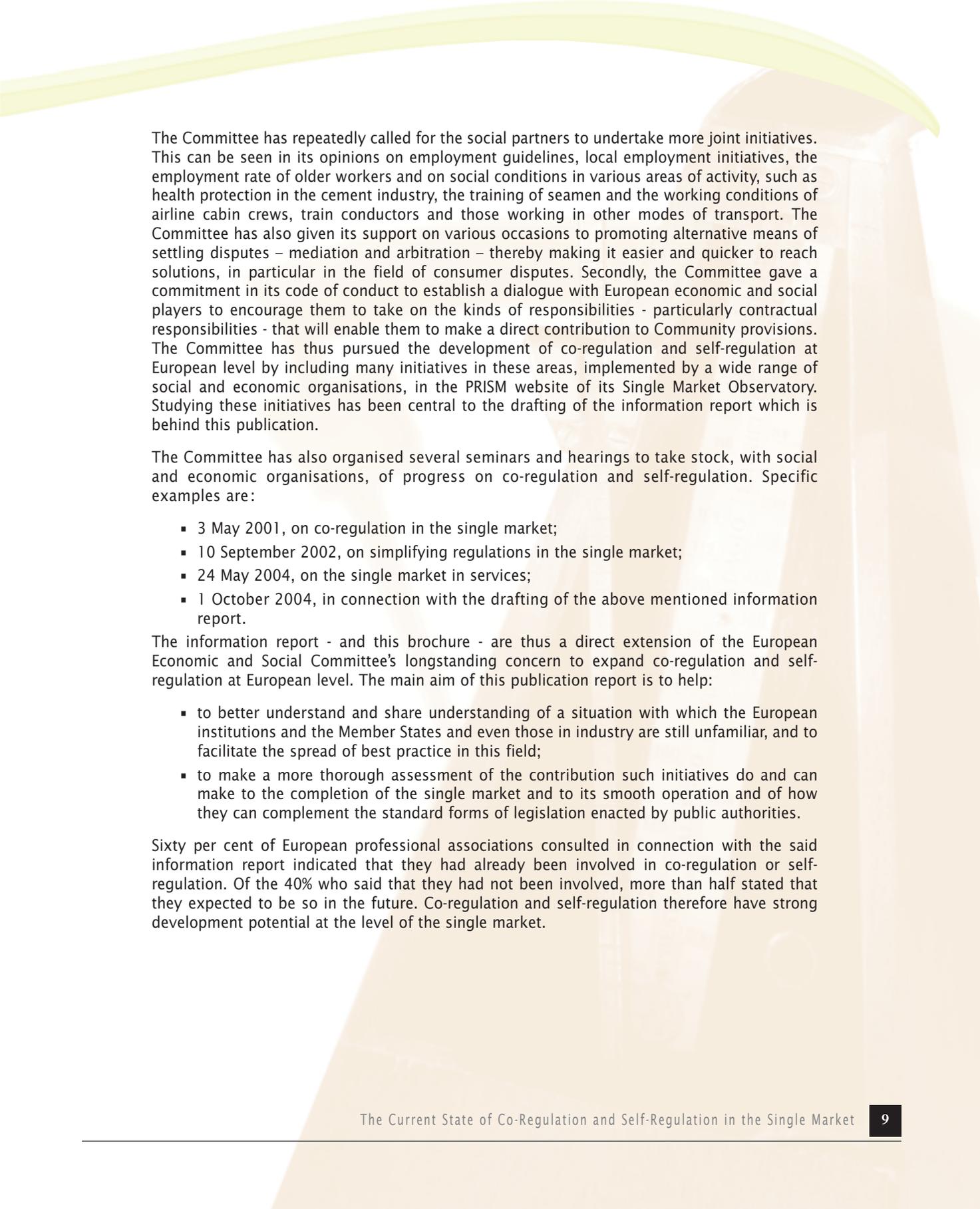
The rules governing the operation of the single market are basically grounded in regulations and directives adopted, within the framework of the Treaty on European Union, by the EU institutions – complemented by case law established by the Court of Justice in Luxembourg. Industry organisations and trade unions directly affected by proposed Community regulations are consulted on the proposal and, on the basis of this consultation, the Commission carries out an impact analysis. These organisations then have the opportunity to lobby the Parliament and the Council in defence of their positions before a decision is reached.

Beyond this consultative and lobbying role, which generally makes up the major part of their mandate and their work, these organisations may also, in certain cases, be called upon to play a more direct role in defining the rules covering their areas of interest. This role might be one of co-regulation, where the European legislator focuses on setting out the basic requirements, leaving it to these organisations or to the standardisation committees in which they participate to define the technical data and specifications. The role is one of self-regulation when professions or organisations set their own rules of conduct within the single market without direct intervention or a specific request from the European legislator.

These alternative rules may take various forms. They might consist of commitments, declarations, charters, labels or voluntary codes of conduct, adopted unilaterally whilst generally involving other associations. They might also be adopted under contractual agreements between the representatives of various sectoral or professional interests who could be social, inter-sectoral or sectoral partners or other categories of civil society stakeholders – such agreements include those concluded between particular industries and consumer associations.

Under its mandate to represent organised civil society, the European Economic and Social Committee has long been interested in developing these co-regulation and self-regulation initiatives in Europe. This is a particularly useful way for the various civil society stakeholders to play a full role in the process of European integration.

In October 2000, the Committee adopted a "Code of conduct designed to make a contribution to the simplification process" in which: firstly, the Committee gave a commitment to draw the attention of the EU institutions to the possible need to steer EU rules towards an approach based on contractual agreements, self-regulation and co-regulation. The aim of this commitment was to provide further alternatives to the traditional form of regulation, by attaching greater priority to freedoms and responsibilities in organised civil society. Since then, the Committee has frequently proposed to the European institutions, in its opinions on numerous draft regulations, that more consideration should be given to alternative methods of regulation, such as co-regulation and self-regulation. Examples over recent years are the Committee's opinions on e-commerce, the services market, financial services, insurance, payment methods and deadlines, cross-border payments in euros, labelling and consumer information, the technical specifications of some products (for example frontal protection for motor vehicles), energy savings, tourism and environmental protection.



The Committee has repeatedly called for the social partners to undertake more joint initiatives. This can be seen in its opinions on employment guidelines, local employment initiatives, the employment rate of older workers and on social conditions in various areas of activity, such as health protection in the cement industry, the training of seamen and the working conditions of airline cabin crews, train conductors and those working in other modes of transport. The Committee has also given its support on various occasions to promoting alternative means of settling disputes – mediation and arbitration – thereby making it easier and quicker to reach solutions, in particular in the field of consumer disputes. Secondly, the Committee gave a commitment in its code of conduct to establish a dialogue with European economic and social players to encourage them to take on the kinds of responsibilities - particularly contractual responsibilities - that will enable them to make a direct contribution to Community provisions. The Committee has thus pursued the development of co-regulation and self-regulation at European level by including many initiatives in these areas, implemented by a wide range of social and economic organisations, in the PRISM website of its Single Market Observatory. Studying these initiatives has been central to the drafting of the information report which is behind this publication.

The Committee has also organised several seminars and hearings to take stock, with social and economic organisations, of progress on co-regulation and self-regulation. Specific examples are:

- 3 May 2001, on co-regulation in the single market;
- 10 September 2002, on simplifying regulations in the single market;
- 24 May 2004, on the single market in services;
- 1 October 2004, in connection with the drafting of the above mentioned information report.

The information report - and this brochure - are thus a direct extension of the European Economic and Social Committee's longstanding concern to expand co-regulation and self-regulation at European level. The main aim of this publication report is to help:

- to better understand and share understanding of a situation with which the European institutions and the Member States and even those in industry are still unfamiliar, and to facilitate the spread of best practice in this field;
- to make a more thorough assessment of the contribution such initiatives do and can make to the completion of the single market and to its smooth operation and of how they can complement the standard forms of legislation enacted by public authorities.

Sixty per cent of European professional associations consulted in connection with the said information report indicated that they had already been involved in co-regulation or self-regulation. Of the 40% who said that they had not been involved, more than half stated that they expected to be so in the future. Co-regulation and self-regulation therefore have strong development potential at the level of the single market.

The innovations contained in the interinstitutional agreement "Better Lawmaking"

For a long time, European self-regulation has developed outside any recognised legal framework, with considerable disparities between the various national situations. Some States, which were familiar with these practices, were generally inclined to support them, in particular English-speaking countries, who described them as "soft law". But other countries with different historical traditions saw them more as a potential threat to the prerogatives of public authority and were instinctively inclined to discourage them, more or less openly. The ambiguities inherent in this "grey" area of Community law, which is controversial and consequently without a statute, have certainly hampered the development of self-regulation and co-regulation at European level. Consequently, although all European associations are instructed by their members to lobby the EU institutions, a number of them still believe that they do not have a mandate to get involved in self-regulation or co-regulation initiatives.

The 1992 Maastricht Treaty started to rectify this situation by setting out the framework and the effects of European social dialogue between the social partners in their contractual role – incidentally at the express request of these very groups. Almost ten years later, the Commission started to lay down more general conditions for developing co-regulation and self-regulation, in the 2001 White Paper on European Governance and then in various communications and recommendations, especially that of 2002 on environmental agreements.

A key stage in this political development was the interinstitutional agreement "Better Lawmaking", which was concluded on 16 December 2003 between the Parliament, the Council and the Commission. This agreement for the first time identified and provided a framework for the practices of co-regulation and self-regulation within the single market.

The agreement states that "the three Institutions recall the Community's obligation to legislate only where it is necessary, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality. They recognise the need to use, in suitable cases or where the Treaty does not specifically require the use of a legal instrument, alternative regulation mechanisms". It also states that "the Commission will ensure that any use of co-regulation or self-regulation is always consistent with Community law and that it meets the criteria of transparency (in particular the publicising of agreements) and representativeness of the parties involved. It must also represent added value for the general interest. These mechanisms will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States. They must ensure swift and flexible regulation which does not affect the principles of competition or the unity of the internal market".

the interinstitutional agreement "Better Lawmaking" 2003

Co-regulation is defined as *"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). This mechanism may be used on the basis of criteria defined in the legislative act so as to enable the legislation to be adapted to the problems and sectors concerned, to reduce the legislative burden by concentrating on essential aspects and to draw on the experience of the parties concerned"*.

The agreement adds that *"the legislative act must abide by the principle of proportionality defined in the EC Treaty. Agreements between social partners must comply with the provisions laid down in Articles 138 and 139 of the EC Treaty. In the explanatory memoranda to its proposals, the Commission will explain to the competent legislative authority its reasons for proposing the use of this mechanism". Furthermore, "in the context defined by the basic legislative act, the parties affected by that act may conclude voluntary agreements for the purpose of determining practical arrangements. The draft agreements will be forwarded by the Commission to the legislative authority. In accordance with its responsibilities, the Commission will verify whether or not those draft agreements comply with Community law (and, in particular, with the basic legislative act). At the request of inter alia the European Parliament or the Council, on a case-by-case basis and depending on the subject, the basic legislative act may include a provision for a two-month period of grace following notification of a draft agreement to the European Parliament and the Council. During that period, each Institution may either suggest amendments, if it is considered that the draft agreement does not meet the objectives laid down by the legislative authority, or object to the entry into force of that agreement and, possibly, ask the Commission to submit a proposal for a legislative act"*.

"A legislative act which serves as the basis for a co-regulation mechanism will indicate the possible extent of co-regulation in the area concerned. The competent legislative authority will define in the act the relevant measures to be taken in order to follow up its application, in the event of non-compliance by one or more parties or if the agreement fails. These measures may provide, for example, for the regular supply of information by the Commission to the legislative authority on follow-up to application or for a revision clause under which the Commission will report at the end of a specific period and, where necessary, propose an amendment to the legislative act or any other appropriate legislative measure".

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)"*.

The agreement states that *"as a general rule, this type of voluntary initiative does not imply that the Institutions have adopted any particular stance, in particular where such initiatives are undertaken in areas which are not covered by the Treaties or in which the Union has not hitherto legislated. As one of its responsibilities, the Commission will scrutinise self-regulation practices in order to verify that they comply with the provisions of the EC Treaty". It adds that "the Commission will notify the European Parliament and the Council of the self-regulation practices which it regards, on the one hand, as contributing to the attainment of the EC Treaty objectives and as being compatible with its provisions and, on the other, as being satisfactory in terms of the representativeness of the parties concerned, sectoral and geographical cover and the added value of the commitments given. It will, nonetheless, consider the possibility of putting forward a proposal for a legislative act, in particular at the request of the competent legislative authority or in the event of a failure to observe the above practices"*.

It can thus be seen that the inter-institutional agreement of December 2003:

- set out, for the first time, a statute both for self-regulation and co-regulation, and at the same time laid down precise definitions of them;
- organised these practices into a set of legal rules and requirements, which will enable their coexistence, their compatibility and their complementarity to be better managed by means of legal provisions;
- provided for monitoring and follow-up mechanisms, entrusted directly to the European Commission and to which the European Economic and Social Committee also wishes to contribute, as demonstrated by the information report;
- thus opens a new chapter in the development of co-regulation and self-regulation in the single market, with new prospects that are directly relevant to European integration and to the involvement of its economic and social stakeholders.

The development of European co-regulation and self-regulation

The first initiatives for co-regulation and self-regulation initially focused on three areas: technical standardisation, professional rules and social dialogue.

European standards are drawn up by European committees, of which national standardisation bodies, which may also be certification bodies, are members. When these standards are drawn up, consensus is sought between the different interests that are present – producers, sellers, users, consumers, test laboratories, public authorities, research institutions, etc. Several thousand European standards have thus been adopted by the European Committee for Standardisation (CEN), the European Committee for electrotechnical standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI). While three quarters of these standards are covered by self-regulation by the parties concerned, one-third constitutes a form of co-regulation, developed in conjunction with the European legislator in the last fifteen years under what is known as the "*new approach*". The European legislator thus confines its action to the 'essential requirements' of harmonisation, mainly linked to considerations of safety, health, the environment and consumer protection, whilst referring the corresponding technical specifications to the standardisation bodies linked to the Commission for this purpose by a standardisation contract. In this context, the mutual recognition of goods or services has also grown, especially under the auspices of the European Organisation for Conformity Assessment (EOTC).

Self-regulation in the professions has developed at European level in the last twenty years in a very broad range of activities, not least within the liberal professions, which had already been widely self-regulating at national level for a long time (often by means of time-honoured professional orders, such as those for lawyers and doctors). These examples of self-regulation, generally based on codes of conduct, supported where appropriate by the social partners of the sector, have helped to establish codes of ethics and common practices, thereby facilitating the implementation of the principle of mutual recognition. We can refer in this context to European self-regulation in the following professions: engineers (1982), lawyers (1988), perfusion nurses (1991), advertising agencies and consultants (1992), restaurateurs (1993), solicitors (1995), travel agents (1996), Internet service providers, hairdressers, asset managers, estate agents (2001), hoteliers (2003). These agreements cover only some aspects of the profession, generally to do with qualifications, training or rules of conduct, but they do make it considerably easier to transfer the right to practise these activities from one Member State to another.

European self-regulation and co-regulation have also become established between social partners. At inter-sectoral level, the foundations for this were laid by the social dialogue encouraged by European Commission President Jacques Delors (the so-called Val Duchesse meetings), which resulted in a series of joint declarations by the European social partners. Subsequently, the contractual role of the social partners was formally recognised – at their express request – by the Maastricht Treaty. Among other things, this provided for a special procedure for consulting the social partners – at sectoral or inter-sectoral level – before embarking on Community legislation on social matters. Such consultation could result in contractual agreements between them instead of regulation. Such agreements between social partners can, at their request, be ratified by the Council, acting on a proposal by the Commission, and thus take on the force of law.

Three directives have thus been adopted by the Council following this type of European inter-sectoral agreement. They deal with parental leave, (1995), part-time working (1997) and fixed-term contracts (1999). A European social inter-sectoral agreement was also concluded in 2000 in the field of teleworking, which the signatories (Unice, CEEP, UEAPME and the ETUC) this time agreed to implement on a voluntary basis through their members and not by means of Council directives. The same voluntary approach resulted in an agreement between the social partners in 2004 on work-related stress.

Social self-regulation has also grown significantly at sectoral level, often through sectoral committees for social dialogue set up by the social partners of that sector. They have taken a very wide range of forms, from simple joint declarations or recommendations, through codes of conduct and guidelines, to binding agreements. The areas they covered were just as diverse, and included employment, social dialogue, working conditions, working hours, health and safety, and training. The following list, whilst far from being exhaustive, gives a few examples :

- a professional code of conduct for hotel contracts in 1996,
- a framework agreement on improving paid employment in agriculture in 1997,
- an agreement on social security contributions in the building industry in 1997,
- an agreement on pension fund management in the social economy in 1998,
- a joint recommendation on apprenticeship in the sugar sector in 1998,
- an agreement on promoting employment in the postal sector in 1998,
- an agreement on the organisation of working time in shipping in 1998,
- a code of mutual recognition for union membership in the building industry in 1998,
- an agreement on organisation of working time of civil air crews in 2000,
- guidelines on teleworking in telecommunications in 2001,
- a framework agreement on teleworking in business in 2001,
- a code of conduct in hairdressing in 2001,
- a agreement on training and professional qualifications in farming in 2002,
- guidelines on age diversity in commerce in 2002,
- a joint declaration on lifelong learning in the banking sector in 2002,
- a agreement on vocational training in farming in 2002,
- a code on social responsibility in the hotel sector in 2003,

- a joint declaration on equal opportunities and diversity in the electricity sector in 2003,
- a joint declaration on corporate social responsibility in commerce in 2003,
- a code of conduct on social responsibility in the sugar industry in 2003,
- a code of conduct in the private security sector in 2003,
- a joint declaration on teleworking in the electricity sector in 2003,
- an agreement on working conditions for railway staff – cross-border intermodality – in 2004,
- joint recommendations by the social partners for the cleaning industry in 2004,
- a declaration by local and regional authorities on teleworking in 2004,
- a declaration on promoting employment and integration of people with disabilities in the commerce and distribution sector in 2004,
- guidelines for call centres in telecommunications in 2004.

The above-mentioned agreements affecting shipping, civil aviation and the railways have been the subject of Council decisions making their implementation official.

A key aim of some sectoral codes of conduct between the social partners in various sectors has been to promote labour standards at international level, mainly in developing countries. For instance:

- a code of conduct on child labour in the footwear sector in 1996;
- a code of conduct for the textile and clothing sector in 1997;
- an agreement on the fundamental rights and principles of workers in the commercial sector in 1999;
- a code of conduct in the leather and tannery sector in 2000;
- a code of conduct in the footwear sector in 2000;
- a social partners' charter in the European wood industry in 2002.

Many European multinationals, especially those that have set up a European-level works council in line with the 1996 directive on information and consultation in European companies, have adopted codes of conduct on industrial relations within the company. Following the example of professional codes of conduct on international labour standards mentioned above, such codes of conduct in multinational companies have been more to do with industrial relations in the context of globalisation, in line with the guiding principles drawn up by the OECD or the code of conduct for multinationals produced by the European Parliament in January 1999 – the Howitt report.

European co-regulation and self-regulation initiatives have been extended in recent times to cover consumers, especially in the spheres of business, financial services and industry.

In business, self-regulation has developed in the form of agreements or voluntary commitments, as a result of pressure from three sources:

- first from consumers and their associations, who are anxious to have better information about products and services (labelling etc) and to enjoy security in transactions and an after-sales service, such as payments, guarantees, maintenance, claims;
- from the advertising industry, which has been keen to complement legislation by voluntary approaches to make advertisers more responsible and improve public awareness;
- also from e-commerce, which has grown considerably in the last ten years or so as a result of the Internet, placing particular emphasis on the above-mentioned consumer needs.

This includes, mainly in the period from 1995 to today:

- agreements on direct selling and disputes arising from direct selling;
- the development of security labels for e-commerce;
- the organisation of cross-border mail-order sales;
- the reporting of good practice and even certification for professional profiles in the information society, in particular for Internet service providers.

These provisions are also often accompanied not only by a system for monitoring their implementation, but also by simplified regulations on consumer disputes, vastly increasing their effectiveness.

Self-regulation has also grown in the financial services sector. In this area too, the growth of the Internet but mainly the introduction of the euro and of a single, more integrated European financial area have been a driving force. The self-regulation initiatives of the social and economic stakeholders concerned have helped to break down several barriers within this financial area, for instance:

- the 1998 listing of Norex on the stock exchange and then the creation of Euronext in 2000, linking the Paris, Brussels and Amsterdam stock exchanges;
- the pre-contractual information in 2001 concerning mortgages and insurance on the Internet.

In this area too, initiatives for simplified dispute settlement have been put in place, enhancing the impact of the procedure.

Self-regulation has also grown in recent years to cover relations between industry and consumers. Thus, an agreement was reached in 2001 between UNICE (which represents European industry at inter-sectoral level) and BEUC (consumers). Among other things, this agreement sets out a framework for accrediting trust marks, detailing conditions for monitoring and verification with provision for assessment by an independent third party.

Environmental protection has itself been subject to increased co-regulation and self-regulation in recent years. The Commission has actively encouraged this development, laying down a framework to promote these practices in its recommendation of 17 July 2002 on environmental agreements. These agreements can now be fully recognised at Community level, by means of an assessment and certification procedure:

- either at the recommendation of the Commission monitoring the adoption of the agreement by an exchange of letters between the Commission and the representatives of the sector recognising the agreement;
- or at the recommendation of the Commission accompanied by a Council and European Parliament decision establishing a monitoring and reporting system.

At inter-sectoral level, voluntary commitments have been established at the behest of the public authorities in several countries, Germany in particular, to comply with environmental requirements, especially those set out in the Kyoto agreement on reducing CO₂ emissions in the atmosphere.

At sectoral level, such initiatives have been taken mainly with regard to reducing polluting emissions from motor vehicles.

Other co-regulation and self-regulation initiatives can also be mentioned in a great variety of areas. A few examples are:

- codes of ethics concerning corporate social responsibility, such as in the advertising industry, which has developed codes of conduct in various member countries on the basis of shared principles and values (e.g. obeying laws, good faith, conforming with certain fundamental social values);
- energy savings (example of a 1999 manufacturers' agreement on reducing energy consumption in washing machines).

The development of alternative methods of settling disputes

In the same way that self-regulation and co-regulation have provided a useful complement to the work of the legislator, enabling the latter to focus on areas more appropriate to legislation, alternative dispute settlement mechanisms provide a similar benefit by complementing the work of the judiciary. These mechanisms for conciliation and mediation have developed broadly in parallel with mechanisms for self-regulation, which have themselves often provided for such dispute settlement means.

Alternative means of settlement have in particular developed in parallel with self-regulation in the field of services. Examples are:

- the amicable settlement of cross-border advertising-related disputes, concluded in 1992 through the European alliance for ethics in advertising;
- a simplified procedure for settling disputes arising from direct selling concluded in 1995 – and amended in 2004 – in conjunction with the code of conduct adopted in that field, which agreed to national direct marketing organisations appointing an administrator for the code;
- a simplified method for settling disputes arising from hotel contracts concluded in 1996 appended to the code of conduct in this area;
- a network for the simplified settlement of consumer disputes following the EEJ initiative for the European Extrajudicial Network, started in 2001 at the initiative of the European Commission with support from a network of financial organisations;
- a simplified consumer dispute settlement mechanism concluded by Eurocommerce and Eurochambres in 2002;
- a simplified dispute settlement network for financial services following the FIN-Net initiative started by the European Commission with financial and consumers associations in 2002.

This development has been encouraged, in particular by a Commission recommendation of 30 March 1998 (98/257) concerning the principles to be applied to the mediation of disputes involving consumers. This recommendation places particular emphasis on the criteria for independence ensuring the impartiality of the mediator, concerning his capacity, his competence, his experience, his availability and his autonomy.

Conditions for the success of European co-regulation and self-regulation

Co-regulation and self-regulation – just like the alternative methods for dispute settlement often linked to them – can only work properly if a number of conditions are met. These conditions relate mainly to safeguarding the public interest, the transparency of the system, the representativeness of the signatories and the effectiveness of the monitoring. Below are included a number of considerations gathered from a variety of observations and sources, in particular:

- the recommendations or provisions laid down by the Community institutions, in particular those from the Commission (see the inter-institutional agreement of 2003 and the 2002 communication on environmental agreements);
- the hearings organised by the European Economic and Social Committee with socio-occupational organisations;
- a study of best practices gleaned from the examples of co-regulation and self-regulation listed (especially on the PRISM website of the European Economic and Social Committee's Single Market Observatory).

Firstly, co-regulation and self-regulation must form part of a general interest approach and this must be seen to be the case. Safeguarding the public interest as a matter of priority is particularly necessary in the case of co-regulation, which involves real legislative action. Even in the case of self-regulation, however, which is of concern mainly to category or private interests, the organisation of these interests by the partners concerned cannot be done in a way that might appear damaging to this public interest. Thus, co-regulation and self-regulation must take place in an atmosphere of trust and shared responsibility, with a desire to respect and promote certain fundamental values such as honesty, good faith, respect for others, openness to partnership, and a competitive spirit. The mechanisms for self-regulation and co-regulation must in particular always chime with legislative and legal requirements in Europe, the most important of which are the aims and clauses of the EU Treaty. They must also be compatible with international trade agreements, especially the provisions laid down by the WTO. They must remain under the control of Community and national jurisdiction.

Co-regulation and self-regulation must also be transparent and provide practical information to everyone, without access or cost being a deterrent. Their objective must be stated clearly and unequivocally. The degree of implementation must be measured with reliable indicators. If a long period for attaining an objective is proposed, it would be useful to set interim objectives. Greater publicity can be given to agreements by placing them on the Internet, with additional reports referring to them and the opportunity for all interested parties to submit comments.

Those involved in co-regulation and self-regulation must be representative and must have the means to ensure the effective implementation of the rules that are agreed on. This representativeness has a direct impact on the credibility and effectiveness of these measures.

When a code of conduct is concluded unilaterally, it should be supported by the proven ability of its signatory (for example, the company director), as a guarantee of the value of its provisions. The willingness to consult beforehand with those who are directly affected is also key to demonstrating the value and quality of the rules.

When a code of conduct is adopted by several partners representing complementary interests (for example in their capacity as social partners), this greater number of signatories can only increase the impact of such a code, whilst giving it a collective and even contractual nature. Taking into account the various interests involved in this way ensures balance in the provisions adopted, gives them greater legitimacy, facilitates their full recognition by all parties concerned and enables them to be implemented more effectively.

The representativeness of the signatory(ies) must be proportionate to the sector or sectors covered as well as to the scope and ambitions of the provisions adopted. This will result in appropriate and thus credible and effective representation in sectoral and geographical terms, which can be measured, if necessary in terms of quantity (the number and concentration of members of the organisation) and above all in terms of quality (the ability to act on the ground, to legitimise and then to ensure compliance with the provisions adopted).

Consequently, the European inter-sectoral agreements concluded by signatories such as Unice, CEEP and UEAPME on the one hand and the ETUC on the other, are supported by the broad inter-sectoral, geographical, quantitative and qualitative representativeness of these associations and their members, who are themselves for the most part directly involved, at national level in their own country in such social self-regulation or co-regulation actions, usually through various inter-sectoral and collective agreements.

Because the monitoring and follow-up of self-regulation and co-regulation mechanisms can, where appropriate, involve sanctions, they have a very direct impact on their effectiveness. There are several possibilities. Some agreements and codes of conduct are subject to self-monitoring and self-discipline mechanisms, for instance:

- a self-control mechanism established by the European EFCA association¹ to ensure that the 1992 code of conduct for engineering and consulting companies is implemented;
- the binding provisions of a code of ethics for EU lawyers, adopted in 1988 by the European Bar Association²;
- a disciplinary committee established by a code of conduct for asset managers to ensure that this code is implemented and, if necessary, to decide on sanctions such as warnings, reprimands or proposals to disbar;
- a European alliance for ethics in advertising created in 1992 to promote and coordinate self-regulation in the advertising industry;
- monitoring by the BDI (*Bundesverband der Deutschen Industrie*) of the proper implementation of the agreement concluded in 1995 in Berlin between the government and businesses on the conditions and monitoring of the reduction of CO₂ emissions in Germany, in accordance with the Kyoto Protocol.

Databases can be set up to ensure that monitoring of self-regulation is more effective. One such database for engineering training establishments was set up in 1987 by the *European Federation of National Engineering Associations* (FEANI), in accordance with a European code of ethics which guarantees the mutual recognition of training and qualifications, with a registry of 30,000 engineers who put this code into practice.

¹ European Federation of Engineering Consultancy Associations

² Council of the Bars and Law Societies of the European Union

Compliance with a code of conduct can also be attested by means of a quality mark, for instance:

- the mark created by the members of the European Insurance Committee to certify application of a European code of good practice for the Internet;
- security marks for e-commerce following on from the code of conduct on distance selling.

A European code of conduct can also be implemented through the conclusion of national codes drawn up for this purpose, e.g. the European code of conduct adopted in 1995 – and amended in 2004 – by the Federation of European Direct Selling Associations.

Technical requirements, like standards, can be established to lay down a voluntary code, such as the quantified requirements to reduce the energy consumption of washing machines agreed on in 1999 by the European Committee of Domestic Equipment Manufacturers in conjunction with the European Commission.

The provisions of a code can be set out in clear, practical terms and disseminated in a guide. Examples are:

- the training standards, with a guide, established pursuant to a code of professional rules for European conservators-restorers;
- a user's guide for Internet service providers drawn up in 2001 by the Milan Chamber of Commerce to promote good practice in this field.

Lastly, the European institutions can decide to act in support of a given self-regulation process and even to make it compulsory by making it a binding legal instrument. This would mean *ex post* legislative co-regulation, with legislative provisions drawing on self-regulation, whereas co-regulation is generally socio-professional self-regulation drawing on an *ex ante* legislative framework. For instance:

- in the case of non-binding public support, a recommendation from the Commission supporting a voluntary code of pre-contractual information on mortgages agreed in 2001 by associations in the credit sector and consumer associations;
- in the case of a binding legal instrument, the three directives adopted by the Council following the agreements with the social partners concerning parental leave, part-time work and fixed term employment contracts.

Ultimately, there must be an option to review and revise self-regulation and co-regulation mechanisms, so as to adapt to changes in the situation, in legislation and in people's aspirations. Such clauses have been often added to existing instruments.

Prospects for co-regulation and self-regulation

Initiatives for co-regulation and self-regulation, just like alternative methods of settling disputes, have already made a significant contribution to the smoother operation of the single market, involving social and economic stakeholders more directly in removing barriers. These initiatives bring many advantages that justify encouraging their development.

Firstly, self-regulation and co-regulation initiatives help to remove often complex barriers to the completion and the functioning of the single market, by agreeing on the same common professional rules at European level or arranging the mutual recognition of national rules.

This harmonisation or mutual recognition help to simplify rules in the single market in that they automatically have the support of the organisations concerned and therefore have the best chance of being accepted and properly implemented by them.

Co-regulation and self-regulation mechanisms generally help to make action more flexible and rapid than legislative channels. The same could be said of alternative dispute settlement mechanisms compared with legal proceedings. For the professions and sectors concerned, they therefore provide an opportunity for adapting more easily to the increasing pace of economic, social, technological and environmental change.

These initiatives by the social and economic stakeholders help to free up legislative channels or, in the case of alternative methods for settling disputes, the courts. In doing so, they help to achieve potentially significant savings of public money. They help to ease the often excessive workload of legislators and judges and thus enable them to focus on the issues that genuinely fall within the scope of their core competence, whilst also giving them the opportunity to exercise their authority if these alternative methods appear to have failed to meet the expectations placed in them or created new problems as regards legislative or judicial rules.

Another considerable advantage of co-regulation and self-regulation initiatives is the way in which they lead to a sense of co-responsibility among economic and civil society stakeholders, genuinely making them full partners in the process of European integration. These initiatives have had a very positive impact on civic education, further training, social dialogue, respect for the environment and on greater attention being paid to consumer issues. They thus play a key role in strengthening organised civil society and in ensuring that stakeholders shoulder their responsibilities, something that the Committee has always supported and encouraged.

Whilst offering many advantages, co-regulation and self-regulation are not universal panaceas, capable of solving any problem that might arise. They have their limits in various fields and can even create new problems if they are not undertaken with a deep-seated sense of co-responsibility and unless they are backed up by appropriate legislation.

self-regulation in Europe

in Europe

The same comments often apply to alternative dispute settlement mechanisms – with the difference that it is still possible to appeal to the courts to obtain redress if prejudice is legally established and is punishable, whereas it is clearly less practicable to obtain a response from the legislator where no legal provisions exist.

The limits of co-regulation and self-regulation lie primarily in the conditions under which the rules are implemented and the sanctions that may apply if they are breached.

Although many co-regulation and self-regulation initiatives are subject, as mentioned above in various examples, to monitoring and even to sanctions if their provisions are breached, this is not always the case. There is a problem with co-regulation and self-regulation where they do not contain such provisions. Such lacunae can have serious effects on the real value of the co-regulation and self-regulation in question and can jeopardise their comparative advantages over legislative provisions.

Monitoring and sanctions arrangements can be very variable in their impact. Expulsion from professional associations, withdrawal of advertisements, or unfavourable public announcements on the name and shame principle can be effective due to their economic or professional consequences. However, some sanctions can prove to be difficult to implement, overly complex, and ineffective. Situations of this type can only raise the same concerns and dangers as those described above.

Whilst being effective themselves, co-regulation and self-regulation can also cause problems as regards legal provisions. The problem may involve an issue of ethics, of non-discrimination, of freedom of competition (especially restrictive practices and abuse of a dominant position) or of other legal obligations in the economic, social or environmental fields. Risks of this nature require controls, provided for in an appropriate manner by the interinstitutional agreement of December 2003.

In areas that very directly affect health and safety, and more broadly in the case of services of general interest, co-regulation and self-regulation – even if backed up by sanctions – can prove inadequate in the absence of legislative provisions. Their role in such cases is, above all, to complement legislation, a role which is generally very useful or indeed essential to the extent that, whilst helping to ensure that legislation is proportionate and simple, they help to raise awareness, to inform, to prevent and to encourage responsibility, and can thus play a key role in improving the implementation of legislation.

Conclusions

Full advantage must thus be taken of the opportunities provided by co-regulation and self-regulation whilst mitigating their limitations.

To take full advantages of the opportunities, we would need to:

- Leave greater scope for regulatory freedom: preliminary impact studies should systematically seek out alternatives to a new regulation, and the means of keeping the regulation proportionate to what is absolutely necessary, checking in particular with the social and economic organisations concerned their possible intentions for self-regulation or their ability to cooperate on a self-regulatory approach;
- Better publicise initiatives by the social and economic stakeholders in these areas. For its part, the EESC Single Market Observatory will use its PRISM website to log new initiatives for co-regulation, self-regulation and alternative dispute-settlement mechanisms.

To mitigate the limitations, we should:

- Better publicise best practice in self-monitoring and follow-up, including on the issue of sanctions. When developing its cover of new self-regulation initiatives on the PRISM website, the Committee will be placing particular emphasis on these monitoring and follow-up mechanisms and on the results they provide;
- Promote consultation between those implementing self-regulation and the public authorities: the interinstitutional agreement of 2003 paved the way for a new European partnership between political decision-makers and stakeholders in organised civil society. This will form a key framework for extending these mutual exchanges. The Committee for its part would like to provide ongoing support and assistance to this improved consultation between those implementing co-regulation and self-regulation and the European legislative bodies.

In short, self-regulation and co-regulation initiatives will progress all the more smoothly and productively when everyone stands to gain from their success:

- The public authorities, as a result of being able to concentrate on more focused and higher quality legislation, whilst ensuring the ongoing monitoring of complementary co-regulation and self-regulation;
- Businesses and social and economic groups, who will benefit from greater economic freedom, from improved partnership with public authorities and with other civil society players, and from rules governing their activities that more accurately match their needs;
- Users, who will enjoy more secure access to products and services due to simpler and often more effective rules, which are themselves monitored both by the associations and by the public authorities;
- European integration as a whole, which will move further towards true completion on the ground as a result of the increase in these initiatives.

It thus appears that greater freedom in co-regulation and self-regulation will in future be proportionate to the responsibilities that these generate in all stakeholders and to their effectiveness in the eyes of all users, thereby making the concept of European citizenship more tangible and more relevant for everyone. For its part, the European Economic and Social Committee will continue to develop its observations and debate on ways of promoting co-regulation and self-regulation on the scale of the European single market.

Useful internet references

Useful references



http://www.esc.eu.int/smo/index_en.asp

Single Market Observatory

To contact the European Economic and Social Committee's Single Market Observatory (mention barriers or present socio-professional initiatives of interest to the single market, especially partnerships and self-regulation at European level)

<http://www.esc.eu.int/smo/prism/index.asp>

Interactive information tool about the state of regulation and self-regulation within the Single Market

<http://www.europa.eu.int/solvit/>

Effective problem solving in the Internal Market

<http://www.europa.eu.int/comm/enterprise/networks/eic/eic.html>

To inform smaller firms and others about the rights and opportunities in the single market

<http://www.europa.eu.int/eures/index.jsp>

To find out about employment, educational and training opportunities in Europe

<http://www.eejnet.org>

To facilitate the settlement of consumer affairs litigation within the single market

<http://www.europa.eu.int/youreurope/nav/en/citizens/guides/finnet/en.html>

Settling cross-border financial disputes (FIN-NET)

<http://www.europa.eu.int/europedirect/>

To answer the numerous questions about the European Union

<http://www.europa.eu.int/yourvoice/>

To express your opinion on European policy-making

<http://www.europa.eu.int/youreurope/>

On-line EU and national public services and information for citizens and business

<http://www.ecb.int>

ECB – European Central Bank

in Frankfurt

Among other things, the ECB is responsible for framing and implementing the EU's economic and monetary policy.

<http://www.cedefop.eu.int>

CEDEFOP – European Centre for the Development of Vocational Training

in Thessaloniki

To find out about vocational training schemes and data in Europe

<http://www.eurofound.eu.int>

EUROFOUND – European Foundation for the Improvement of Living and Working Conditions
in Dublin

To find out about schemes and data concerning living and working conditions in Europe

<http://www.emea.eu.int>

EMA – European Medicines Agency

in London

To find out about schemes and data concerning medicines and health in Europe

<http://www.oami.eu.int>

OHIM - Office for Harmonization in the Internal Market (Trade Marks and Designs)

in Alicante

To register a trade mark or design at Community level

<http://www.european-patent-office.org/index.en.php>

EPO – European Patent Office

To obtain a European patent (pending a Community patent)

<http://www.agency.osha.eu.int>

EU-OSHA - European Agency for Safety and Health at Work

in Bilbao

To find out about schemes and data concerning safety and health at work in Europe

<http://www.efsa.eu.int>

*EFSA – European Food Safety Authority
in Parma*

To find out about schemes and data concerning food safety in Europe

<http://www.easa.eu.int/>

*EASA – European Aviation Safety Agency
in Brussels*

To find out about schemes and data concerning aviation safety in Europe

<http://www.emsa.eu.int/>

*EMSA - European Maritime Safety Agency
in Brussels*

To find out about schemes and data concerning maritime safety in Europe

<http://www.cenelec.org/Cenelec/Homepage.htm>

CENELEC - European Committee for Electrotechnical Standardization

For the harmonisation of electrical and electronic goods in the single market through the preparation of voluntary standards

<http://www.cenorm.be/cenorm/index.htm>

European Committee for Standardization

For the harmonisation of technical goods in the single market through the preparation of voluntary standards

<http://www.etsi.org/>

*European Telecommunications Standards Institute
For the preparation of telecommunications standards*

Contact the Single Market Observatory

The Single Market Observatory (SMO) was set up in 1994 within the European Economic and Social Committee (EESC), with the support of the European Parliament, the Council and the Commission. It consists of 30 EESC members and its mission is to check how the single market operates through:

- its actors and users on the ground, by linking up with the regulators in Brussels,
- its overall consistency, rather than just calculating the number of directives,
- its real quality, rather than just adding up the laws published in the Official Journal of the European Communities (OJEC).

The SMO regularly organises hearings in Brussels and in the Member States, as well as in the associated and candidate countries, on general and specific issues, with socio-professional interlocutors of all kinds directly involved in the operation of the single market as actors and as users.

Through its hearings and other work the SMO:

- examines the progress made on removing barriers;
- pushes for the speedier completion of sustainable basic rules for the single market;
- identifies and supports initiatives on the ground to facilitate trans-European trade;
- encourages the development of European approaches through socio-professional self-regulation;
- encourages reflections on the outlook for and necessary adjustments to the single market.

In order to provide better support for initiatives on the ground, especially self-regulation and Europe-wide partnerships, the SMO has set up the PRISM database, which is an interactive network for exchanging information containing many initiatives by the actors and users of the single market.

On the basis of the SMO's analyses concerning progress and delays, opportunities and barriers, the European Economic and Social Committee produces opinions that put forward recommendations for improving the European single market, and which can thus better reflect the expectations of all single market actors and users in Europe.

www.esc.eu.int/smo/index_en.asp
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