



*The European Consumers' Organisation*



*European Consumer Voice in Standardisation*

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Contact : Laura Degallaix  
Email : [ld@beuc.org](mailto:ld@beuc.org)  
Lang : EN/FR

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24 October, 2006  
Contact : Nina Klemola  
Email : [nkl@anec.org](mailto:nkl@anec.org)

## ***Voluntary Environmental Agreements***

**Bureau Européen des Unions de Consommateurs, Avenue de Tervueren 36, bte 4, B-1040 Bruxelles**  
**Tel: +32(0)27 43 15 90, Fax: +32(0)27 40 28 02, [consumers@beuc.org](mailto:consumers@beuc.org), <http://www.beuc.org>**

Europäischer Verbraucherverband  
Europese Consumentenorganisatie  
Organización Europea de Consumidores  
Organização Europeia de Consumidores  
Organizzazione Europea dei Consumatori

Neytendasamtök Evrópu  
Európai Fogyasztók Szervezete  
Evropska potrošniška organizacija  
Den Europeiske Forbrugerorganisasjonen

Euroopan Kuluttajaliitto  
Europejska Organizacja Konsumentka  
Ευρωπαϊκή Οργάνωση Καταναλωτών  
Den Europæiske Forbrugerorganisation  
Den Europeiska Konsumentorganisationen

**ANEC - European Consumer Voice in Standardisation, AISBL**  
**Av. de Tervueren 32, box 27 – B-1040 Brussels, Belgium**  
**Tel: +32-2-743 24 70, Fax: +32-2-706 54 30, [anec@anec.org](mailto:anec@anec.org), [www.anec.org](http://www.anec.org)**

## Summary

In the environmental field, decision-makers increasingly opt for alternative forms of regulation, such as voluntary environmental agreements and other industry self-regulation, instead of using traditional legislative instruments. Whilst these new alternatives may provide more flexible and rapid solutions in comparison to traditional law-making, consumer organisations consider such “soft” measures to often lack transparency, ambition, legitimacy and efficacy. In order for consumer organisations to be able to support voluntary schemes, these should meet certain minimum criteria, and should be firmly based on a general legislative framework laying down such criteria. The existing voluntary environmental agreements have too often failed their improvement targets, and without the public authorities having the means to monitor and efficiently enforce the agreements, not much can be done. In order to be able to support self-regulatory measures, consumer organisations are calling for agreement objectives to be staged and regularly reviewed, and for them to be based on realistic and externally verified baseline scenarios, resulting in significant improvements compared to the ‘business-as-usual’ scenario. The agreements would also need to be effectively enforced and monitored, with several forms of sanctions foreseen in case of non-compliance. Finally, the process itself should be made more transparent and democratic, ensuring balanced stakeholder representation throughout the process. In any case, legislation should remain the main source of environmental regulation.

## Introduction

Consumer organisations have traditionally expressed strong reservations vis-à-vis voluntary environmental agreements<sup>1</sup> and self-regulation<sup>2</sup> in general, in the context of public policy-making. Since the early 1990s, these “soft” instruments have often been praised as alternatives to more traditional regulatory approaches. They are believed to allow environmental protection goals to be met at a lower cost, in a faster and more flexible manner. However, in the absence of solid evidence, such claims are based on little more than “faith” or “ideology”. Public interest advocates observe a variety of shortcomings in these approaches and stress the role of legislation to ensure the basic needs of citizens, such as safety or economic protection.

Consumer organisations have, however, tried to develop criteria which complementary alternative instruments or any form of regulation must meet, and against which they could be assessed. At a seminar in Lund in 2001<sup>3</sup>, a minimum set of criteria was agreed upon, including efficacy, legitimacy and consumer confidence, together with coherence and consistency. The purpose of this paper is to establish some criteria and minimum requirements for voluntary environmental agreements in the spirit outlined above.

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<sup>1</sup> For the purposes of this paper, ‘voluntary environmental agreements’ are seen as a sectoral form of self-regulation.

<sup>2</sup> For the purposes of this paper, ‘self-regulation’ is taken to mean agreements which the industry actors adopt amongst themselves on a voluntary basis, either spontaneously or as a response to possible EU legislation, with the aim of reducing or eliminating the impact of a process, service or product on the environment. They are also sometimes referred to as ‘industry self-commitments’. These currently range from recent European Information & Communications Technology Industry Association’s self-commitments on DVDs and TVs, to the industry self-regulation envisaged in the Eco-design of Energy-using Products Directive (2005/32/EC). Self-regulation is often acknowledged by the European institutions by way of e.g. a Commission Recommendation or a European Parliament and Council Decision.

<sup>3</sup> European Seminar organised by the Swedish Presidency “Voice of the European Consumer” (Lund, 2001).

### A private initiative or an instrument of public policy?

Given the increasing speed and nature of change, “command and control” mechanisms such as traditional regulation are increasingly presented as administratively burdensome, costly and difficult to implement and enforce. The use of voluntary environmental agreements (VEAs) is more and more often seen as an alternative to legislative measures at the EU level. It is opportune to consider the potential of new forms of regulation, but one must not overlook the strengths and merits of the actual existing regulatory system, especially when well devised and effectively enforced.

From the industry’s viewpoint, voluntary environmental agreements are considered as a purely private activity and may sometimes be rewarded by way of higher consumer confidence. Even if not universally observed, VEAs can do some good and even improve things. A potential benefit of voluntary approaches from an environmental point of view would be that they can be put in place to address a given environmental problem more rapidly than traditional regulatory approaches, e.g. new legislation or economic instruments. However, the level and quality of preparation and enforcement determine the likelihood of any environmental improvements. In practice, VEAs often do not make any difference in terms of environmental performance. A “quick” and “flexible” instrument which fails the improvement target is therefore of limited value.

If we were to look at self-regulation as a purely private initiative, we would adopt a rather less critical approach, appropriate for such an initiative motivated by good will and good intentions. However, if self-regulation is to be promoted as an instrument of public policy and lauded as superior in performance to other instruments such as legislation, consumer organisations urge that such schemes should meet, and further be assessed against, certain minimum regulatory criteria<sup>4</sup>:

- ▲ **Efficacy** - *It must work efficiently and achieve results at a minimum cost.*
- ▲ **Democratic legitimacy** - *It must meet generally accepted democratic norms.*
- ▲ **Consumer confidence** - *Consumers must have trust (the more the better) in the system.*
- ▲ **Coherence and consistency in the context of the single market** - *It must produce broadly similar results in different Member States, and must not operate as an obstacle to free movement.*

We strongly believe that new forms of regulation must be firmly based on a general legislative framework laying down, at the very least, these criteria. The fulfilment of these should be monitored and enforced, with the option of applying sanctions in case of non-compliance. This is the only way to safeguard the basic needs of consumers such as a healthy and safe environment.

An example of the current regulatory trend is the Directive on Energy-Using Products<sup>5</sup>, aiming at improving the environmental performance of energy-using products. This Directive foresees the use of VEAs as an alternative to so-called implementing measures by the Commission committees (comitology procedure). Despite these voluntary agreements being an alternative to Commission implementing measures, they are considered, in the Directive itself, as a form of self-regulation, rather than co-regulation. The Directive enumerates, in Annex VIII, criteria to be fulfilled by the VEAs, including openness of participation, quantified and staged objectives, involvement of civil society, and monitoring and reporting. We believe these criteria are a step forward, however, they are neither sufficiently clear nor stringent enough, and the use of VEAs could end up undermining the intended positive effects of the Directive.

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<sup>4</sup> European Seminar organised by the Swedish Presidency “Voice of the European Consumer” (Lund, 2001).

<sup>5</sup> Directive 2005/32/EC on the eco-design of Energy-using Products (EuP).

## **Main drawbacks of voluntary environmental agreements**

### No obligations for industry

A major concern is that VEAs allow the industry to follow, more or less, “business as usual”. Moreover, voluntary commitments of industry can generally not be upheld unless a threat is made by governing institutions. Public authorities are unable to force behavioural changes in industry in an efficient manner as most VEAs do not include any system of sanctions. The authorities also cannot force companies to participate in any particular VEA and thus the industry may only be faced with the introduction of legislation. In practice, this means that necessary environmental protection measures can be delayed for many years, in particular where the VEA extends over a long period of time (e.g. agreements with the car industry to reduce CO<sub>2</sub> emissions<sup>6</sup>).

This makes VEAs a suitable instrument for industry to prevent more demanding environmental protection measures which would require e.g. significant changes in production. Firms may adopt voluntary measures only to avoid more costly government policies that might otherwise be imposed, such as tax payments (e.g. the VEAs involving the German industry were instigated by threats of the introduction of energy taxation<sup>7</sup>). They may also benefit from increased flexibility in terms of how environmental improvements are to be accomplished, often resulting in weak measures.

### Limited participation

In contrast to legal measures, there is no obligation for a specific manufacturer to join a VEA. VEAs tend to involve the better-intentioned and those (e.g. brand owners) who have a long term stake in the market and in building consumer confidence. This leaves many firms with very different business models and priorities. Amongst these are often the ones causing most problems to consumers and the environment and being the least likely to respect self-regulatory schemes, e.g. the free-riders. Participation in VEAs is often (far) below 100% of market coverage. This “free-riding” problem stands mainly because of the lack of formal sanctions in the case of non-compliance. Furthermore, the structure of the industry may have a bearing on the use of VEAs, as they are often easier to develop in a highly concentrated industry.

### Lack of independent controls of compliance and enforcement

There is little or no independent and rigorous analysis of the impact, scope, outcomes and efficacy of self-regulation schemes, or of specific aspects of particular schemes. There is also an obvious problem in determining methods or tools to assess and/or improve VEAs. As the measures are voluntary by nature, the industry is in the position to exert self-control and there is no assurance that the obligations are met in practice. External verifications, e.g. by governmental enforcement bodies, do not take place. Hence, the incentives for industry to comply with the rules are rather limited.

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<sup>6</sup> Agreement between the EU and European car manufacturers to cut CO<sub>2</sub> emissions from cars (1998). This was a counter-proposal by the industry to avoid a European carbon/energy tax, conceived as a means of helping to achieve the Kyoto objectives.

<sup>7</sup> “Joint Declaration of the German Industry on Climate Protection“, Federal association of the German Industry (BDI), March 1996, renewed in 2000.

### An industry perspective versus a societal perspective

Self-regulatory measures are developed, interpreted and applied almost solely by industry. They tend to reflect the industry perspective rather than the perspective of the society as a whole. Ideally, societal stakeholders should be systematically included in the drafting process of the VEA, in negotiating and approving the targets. Unfortunately, we see a dilemma with this as such stakeholders rarely have the resources to participate in all VEA processes, and could end up facing the problem of 'responsibility without power'. They may also reflect a desire to limit certain forms of competition or a desire to deflect criticism, rather than tackle real environmental problems. Finally, voluntary schemes tend to be reactive rather than pro-active in that objectives change only in the face of public concern or the threat of legislation.

Voluntary environmental agreements constitute an instrument which offers many advantages for industry, yet implies almost no real obligation and which, as a consequence, remains doubtful in terms of performance improvements. An OECD study<sup>8</sup> confirmed that voluntary environmental agreements make hardly any difference in practice. After having analysed a number of different VEAs, the study discovered that in most cases such approaches were not found to contribute to environmental improvements significantly different from what would have happened anyway. The study also concluded that "the environmental effectiveness of voluntary approaches is still questionable"<sup>9</sup>.

### **ANEC/BEUC minimum demands regarding voluntary environmental agreements in Europe**

VEAs must be seen as one tool out of many in a policy "tool box". They should be viewed as an added benefit but not as a replacement for legislation. They must not undermine existing Community policies (such as in the case of the energy labelling scheme in which the industry is allowed to follow alternative labelling approaches). VEAs should instead build on, and further, the objectives and targets of current legislation.

### Clear environmental baseline requirements

- The VEA objectives and targets must be based on a realistic and externally verified "business as usual" scenario to determine a baseline. They must result in significant improvements compared to this basic scenario and lead to the elimination of a significant proportion of products with poor performance (e.g. 20%). The coverage of products on the market should be at least 80% to 90%.
- Targets should be quantified and staged in a binding form to achieve effective and measurable environmental improvements. Regular short-term targets must be met, rather than having only long-term goals, to allow to take alternative actions when it becomes clear long before the agreed time-frame that the targets cannot be fulfilled (as in case of CO<sub>2</sub> emissions of cars). Furthermore, the environmental targets need to be reviewed regularly, e.g. every 3 years.

### Effective control of compliance and enforcement

- Credible enforcement measures must be in place, including annual reporting, clearly defined individual company responsibility (for meeting the overall VEA objectives) and at least partial independent verification. The funds for this must be foreseen in the VEA.

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<sup>8</sup> Voluntary Approaches for Environmental Policy, Effectiveness, Efficiency and Usage in Policy Mixes, OECD (2003).

<sup>9</sup> Voluntary Approaches for Environmental Policy, Effectiveness, Efficiency and Usage in Policy Mixes, OECD (2003), page 14.

- Severe sanctions, other than the threat of legislation, must be foreseen and effectively applied in case regular (appropriately set) targets are not met, or for non-compliance with other aspects of the VEA. These penalties could be in the form of significant monetary sanctions, in the form of repealing the VEA, or in suspending or expelling members. The particular form of the penalty would depend on the decision-maker involved.

#### Democratic and transparent process

- If a VEA is resorted to, a steering panel with balanced stakeholder participation should be set up to draft the VEA in question, to negotiate and approve targets, to agree on reporting mechanisms and to review progress.
- The European Parliament must have the right to object to the VEA, as in the case of an implementing measure which follows the comitology procedure.
- Agreements, as well as the results obtained, should be made publicly available so that consumer awareness and transparency are ensured.

#### **Concluding remarks**

The above conditions are currently not fulfilled by any existing or planned VEA dealing with environmental aspects of products in Europe. Hence, these schemes are not supported by ANEC/BEUC.

We question the usefulness for policy-makers of relying on current voluntary approaches to achieve environmental targets. Such approaches provide few environmental improvements beyond what would have occurred anyway. Legislation should remain the main source of environmental regulation. If a VEA is nonetheless adopted in order to be able to address a newly emerging problem as rapidly as possible, care should be given not to constrain the subsequent introduction of other – possibly more environmentally effective – policy instruments.

END.