

Position of the German Chemical Industry Association (Verband der Chemischen Industrie e. V. - VCI) on self-commitments as an instrument in environmental and consumer protection policies

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In this position paper the VCI wants to describe own experiences and findings gathered within the study "Evaluation of self-commitments of chemical industry associations" (original German title: Evaluation von Selbstverpflichtungen der Verbände der chemischen Industrie). The VCI wishes to expound major aspects of the contents of this subject and to contribute to a constructive discussion. Furthermore the VCI takes position on the essential elements of the EU Communication on environmental agreements of 17 July 2002 (COM(2002) 412 final).

With over 40 self-commitments since the early eighties, the VCI and the VCI sector associations (Fachverbände) have been leaders in Germany in the application of this important political instrument. Some sector associations - e.g. the German cosmetics and detergents association IKW - have been even longer using this instrument successfully. An overview of the self-commitments made by the VCI and the VCI sector associations is attached.

In German language there is, in practice, no clear-cut differentiation between the terms "Vereinbarung" (literally: agreement) and "Selbstverpflichtung" (literally: self-commitment). At European level, e.g. in the Communication from the EU Commission of 17 July 2002, exclusively the term "environmental agreement" (in German: Umweltvereinbarung) is used. However from the viewpoint of the VCI and the VCI sector associations a differentiation is necessary.¹

"Selbstverpflichtungen" (self-commitments) are sector-specific commitments made by associations, usually as the outcomes of intensive discussions and negotiations with the public administration. It is worth mentioning that these self-commitments are made exclusively by an association to the public administration. They are handed over in a formal manner and then jointly published.

¹ Translator's note: Irrespective of the above, in translations from German into English the term "voluntary agreement" for "Selbstverpflichtung" is frequently used, too, whilst obviously the term "self-commitment" more adequately reflects the considerations underlying this position paper.

The described approach relies on the readiness of the public administration to postpone, either indefinitely or temporarily, the passing of relevant legal rules. But quite frequently VCI sector associations also make self-commitments when no influence is exerted by the public administration; such self-commitments are developed and published as common product responsibility guidelines (gemeinsame Richtlinien zur Produktverantwortung) by the members of the respective sector associations. A good example is the exclusion list for printing inks and related products of the association of the German printing ink industry - Verband der Druckfarbenindustrie.

Where contents are concerned, self-commitments can refer to fields of activity in health, safety and environment and in consumer and climate protection. Therefore we feel that limiting this instrument to environmental protection only, as proposed in the Commission communication of 17 July 2002, does not fully comprise its scope.

Several factors are decisive to the success of self-commitments. These include clear-cut, achievable aims, an incontestable negotiating mandate for the concerned association, an evaluation of impacts of a self-commitment on companies and the association, an examination if and in what way market partners can be involved, as well as transparency. Further important factors are the number and the homogeneity of the participating companies. For self-commitments meant to last over several years, changes in the basis for business resulting from changes in the legal and political framework conditions must be considered.

1. Advantages of self-commitments

Compared with administrative rules or fiscal instruments, self-commitments applied in suitable fields offer, in our opinion, many advantages for the public administration and industry alike, such as:

- **Good acceptance in companies**, because self-commitments and their success are based on entrepreneurial initiative. Industry is an active partner in the elaboration of contents, time schedules and the selection of means; they are not reduced to the role of a subordinate who follows legal rules without a say.
- **Incentives for innovation** by using the competence of industry. Self-commitments with agreed targets promote the search for efficient solutions how those targets can be reached.
- **Use of scope for adaptation and cost advantages**, because in the identification of the targets as such the focus is on coordination and consent with government agencies. It is left to the companies or the industry concerned in what way the identified targets are reached.

- **Own responsibility instead of legal requirements**, as self-commitments are based on the principle of self-responsibility of industry and thus result in own corporate rules. Good use can be made of market forces to implement self-commitments. Environmental targets are achieved that might have required much bureaucracy had they been decreed under administrative law. Consequently, the self-control of companies can also ease the burden on the state.
- **Bridging gaps in the rules** of the public administrative framework by the companies.
- **Improving the possibilities for a dialogue** and a constructive cooperation between all stakeholders.
- **Avoiding the economic and finance-political problems linked with fiscal instruments**, because self-commitments are made giving equal consideration to ecological, social and economic aspects. Through self-commitments not only new burdens due to regulation can be avoided, self-commitments are also an alternative to ecotaxation with its heavy burdens on Germany as a production location.
- **The principle of subsidiarity**, because self-commitments as an instrument fulfill the principle of subsidiarity of state action. With the help of self-commitments industry-specific problems can be solved more efficiently and in a better targeted manner, and possibly even faster. This is also because of the readiness of companies to seek innovative solutions on their own initiative.

2. **Responsible Care - The starting point for the VCI and the VCI sector associations**

The VCI, its sector associations and its member companies are committed to the global initiative Responsible Care. In this initiative the will of the chemical industry becomes manifest to continually improve the protection of health and the environment as well as the safety of employees and fellow citizens, irrespective of legal requirements.

In line with this objective, the chemical industry endeavours to strengthen the cooperation with the German federal government and the governments of the German federal states. Now as in the past, we wish to participate in the development of political goals and to help solve jointly identified problems, especially where precautionary measures are concerned and preferably by applying the instrument of self-commitments.

Where the terms "voluntary self-commitment" or "voluntary agreement" are used in practice, they do not mean random activities. On the contrary, self-commitments include ambitious goals meant to be met. The public administration and industry are free to determine the degree of bindingness by agreeing on control instruments (monitoring) and through the choice of the legal form. Companies, too, are free to make

commitments vis-à-vis government agencies and to enter into agreements regulating individual cases. Such commitments/agreements are not the subject of this position paper.

3. Relation to administrative law and other instruments available in environmental and consumer protection policies

Self-commitments do not put into question the need for state prescribed framework conditions to protect health, consumers or the environment. As a matter of principle, existing administrative law is not affected by self-commitments. However self-commitments in suitable fields can render administrative law or other forms of state action superfluous. Therefore the state should primarily examine whether the instrument of self-commitments is better suited to reach a given aim and, in the affirmative case, if administrative law or other state control instruments can be dispensed with.

The focal area of application for self-commitments is precautionary action in health, consumer and environmental protection, especially where administrative law cannot be applied at all or be put into practice to a limited extent only. This is true, for example, of long-term agreements on the phased reduction of emissions (e.g. the self-commitment of the chemical industry to reduce greenhouse gases) or substance or product related self-commitments to facilitate and enhance technological innovations towards environmentally sounder substitutes (e.g. self-commitments regarding CFCs). Additionally self-commitments can cushion negative impacts of measures taken under administrative law, as they enable solutions better attuned to the individual cost situation and investment cycles of companies.

For targets to be reached in long-term self-commitments, it is obviously useful to incorporate quantifiable interim goals, enabling an early assessment whether steps already taken are adequate to reach the overall aim and allowing stakeholders to react flexibly and to take additional steering measures if necessary. In discussions about contents of such self-commitments also options how to proceed in the event of significant changes in the political or legal basis should be considered ("adaptation clause").

In cases of cooperative action with a partial assumption of responsibility by industry, the state still meets its political responsibility. State decision-makers are free to consider and to decide if they want to accept the self-commitments proposed. They must equally decide if the aspired level of protection can be reached by way of self-commitments.

The VCI is ready for a dialogue on the framework for self-commitments, and this dialogue was taken up also by the Commission with its communication on environmental agreements of 17 July 2002. From our viewpoint it is essential to maintain the necessary flexibility and an examination on an individual case basis.

Within such framework conditions, the publication both of self-commitments and the outcomes of their monitorings must be prescribed; in special cases also a review of data must be mandatory. In cases of outstanding interest to a critical general public, the VCI is prepared to engage with the stakeholders in a dialogue on the contents of self-commitments in their elaboration phase.

4. Binding effect of self-commitments

The self-commitments of the VCI and its sector associations include the obligation of the respective association to insistently work among its membership toward the realisation of the adopted aims. In individual cases the companies can become co-signatories to self-commitments, i.e. they can become direct parties to agreements made in this form.

Compliance with self-commitments is highly important to the VCI and its member companies. This ensues from

- The commitment to Responsible Care,
- The wish of the association and its membership to maintain their credibility in the political arena and in the general public and to avoid image losses,
- The interest of companies and the association in making self-commitments a success in order to have long term security in planning and investment,
- The acceptance in the member companies, because they are involved in the discussion and adoption of self-commitments through the association committees,
- The monitoring which is part of self-commitments, ensuring success control and thus transparency.

Self-commitments are largely successful. Existing experiences of the VCI and its sector associations show that the association internal rules are strong enough to ensure adherence to self-commitments. So far the constant mutual observation of competitors on the market has proven its worth as an instrument to ensure discipline among the association membership. Member companies who do not meet the requirements of self-commitments - e.g. relating to substances or products - in attempts to gain competitive advantages (so-called "free riders") come under strong pressure within the association. A different problem are competitors not organised in the association (see item 6).

In a few individual cases self-commitments were only partly successful or failed. In the existing experiences of the VCI and its sector associations and according to the outcome of the evaluation study, this was not due to lack of discipline among the membership but because of the market behaviour of processors not tied to the self-commitments. Failure in isolated cases does not speak against the instrument of self-commitments as such, even more so since there are shortcomings in the

implementation of administrative law as well. Rather, such problems are reason enough to in future intensify the involvement of upstream and downstream players and their organisations in negotiations on self-commitments. In the elaboration of the most recent self-commitments this is already done successfully.

To bring about a binding effect of self-commitments it is, therefore, neither necessary to shape the commitments in such a way that they are enforceable in law courts nor to provide for additional sanctions (e.g. contractual penalties).

5. Competition and market conformity

Concerns in terms of anti-trust law are duly taken into account, as the VCI and its sector associations notify self-commitments to the German Federal Cartel Office (Bundeskartellamt) where impacts on competition are thoroughly examined.

So far the Federal Cartel Office did not oppose any self-commitment of the VCI or its sector associations, because the aims of these commitments were identifiably in the fields of safety and environmental and health protection, opponents on the market were involved, and impairments of competition resulting from self-commitments were - comparably with rules decreed under administrative law - desirable from political aspects.

Criticism based on an alleged lack of conformity of self-commitments with the market economic order is unjustified, because this critical attitude with a strong emphasis on economic governance (Ordnungspolitik) is based on the ideal of a market whose outstanding features include total transparency and full information to all market players, including the public administration. But there is no such situation in the real economic world where usually uncertainties, incomplete information and other market imperfections prevail. Especially in cases where manufacturers have information not available to government agencies, self-commitments can close such "gaps". Therefore this instrument can bring about what neither the market nor states are able to achieve. The instrument of self-commitments is an institutional innovation in accordance with economic governance. If suitably applied self-commitments are much more target-oriented in efforts to solve ecological problems than instruments conventionally used in environment politics. Besides self-commitments involve considerably lower costs for national economies. In contrast with other administrative or fiscal instruments, self-commitments directly resort to the problem-solving potential of industry and use it effectively. The willingness and the ability to innovate are constructively supported.

6. Competitors outside the association

Companies not organised in the association are not allowed to gain advantages at the expense of companies tied to a self-commitment. This applies equally to importers who supply traders with products that do not fulfil the requirements laid down in relevant self-commitments. These facts are also highlighted in the final report of the evaluation study.

In such cases the VCI or its sector associations will carefully examine the importance of upstream and downstream companies/industries or competitors outside the association, respectively. Should the support of competitors from outside the association or upstream/downstream industries be needed to make a self-commitment a success, the VCI or its sector associations will include the non-participating companies through their associations in discussions on the self-commitment and call upon them to co-sign it or to follow its rules.

This course of action is recommended in the final report of the evaluation study. As the state has an interest in the success of self-commitments, the state will support them through appropriate actions.

7. Conclusion

The VCI will further develop the instrument of self-commitments in political practice and promote self-commitments also at European level. Here the prerequisite is that state and his government agencies are also in future willing to accept and to constructively participate in this effective strategy of environmental and consumer protection. From our view this means that European institutions should primarily pursue the approach of self-regulation.

Self-commitments of the VCI and VCI sector associations

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Translator's note: The titles of these self-commitments are freely translated. To avoid misunderstandings the full original titles in German language are quoted as well.

- Statement of additional warnings for dishwashing products (1980/89)
Angabe zusätzlicher Warnhinweise bei Geschirrspülmitteln
Industrieverband Körperpflege- und Waschmittel (IKW, association of the toiletries and detergents industry)
- Commitment of the wood protectant industry not to manufacture PCP-containing agents (1984)
Verzicht der Holzschutzmittelindustrie auf die Herstellung PCP-haltiger Mittel
Deutsche Bauchemie (construction chemicals association, formerly ibh)
- Self-commitment on the reduction of shares of solvents and heavy metal compounds in paints and varnishes (1984)
Selbstverpflichtung über die Reduzierung der Anteile von Lösemitteln und Schwermetallverbindungen von Lacken und Farben
Verband der Lackindustrie (paint industry association)
- Agreement on hypochloride-containing household cleaners (1985)
Vereinbarung über hypochloridhaltige Haushaltsreiniger
IKW, Industrieverband Putz- und Pflegemittel (IPP, association of cleaning products manufacturers)
- Attaching child-resistant closures to packagings of highly irritant or corrosive products (1985)
Anbringung kindergesicherter Verschlüsse bei stark reizenden beziehungsweise ätzenden Produkten
IKW
- Self-commitment not to use polybrominated diphenyl ether (PBDE) as flame-retarding agent for plastics (1986)
Verzicht auf den Einsatz polybromierter Diphenylether (PBDE) als Flammenschutzmittel für Kunststoffe
Verband Kunststoffherzeugende Industrie (VKE, association of the plastics manufacturing industry)

- Agreement on the reduction of environmentally burdening active substances in underwater paints for boats (1986)
Vereinbarung zur Verringerung umweltbelastender Wirkstoffe in Unterwasserfarben für den Bootsanstrich
Verband der Lackindustrie

- Commitment not to use alkyl phenol ethoxylates (APEO) in detergents and cleaning products (1986)
Zusage über den Verzicht auf Alkylphenoethoxylate (APEO) in Wasch- und Reinigungsmitteln

IKW, IPP, Fachvereinigung Industriereiniger (FIR, sector group industrial cleaners, the successor organisation of Industrieverband Hygiene und Oberflächenschutz - IHO), TEGEWA (association of the manufacturers of textile, paper and leather auxiliaries, tanning and detergent raw materials)

- Notification of frame formulations and further particulars on the environmental compatibility of detergents and cleaning products pursuant to § 9 of the detergents act (1986)
Mitteilung der Rahmenrezepturen und sonstiger Angaben zur Umweltverträglichkeit von Wasch- und Reinigungsmitteln nach § 9 Waschmittelgesetz
IKW, IPP, IHO, TEGEWA

- Programme to reduce ammonium discharges in waste waters from the chemical industry (1986)
Programm zur Verminderung der Ableitung von Ammonium im Abwasser der chemischen Industrie
Verband der Chemischen Industrie (VCI, German chemical industry association)

- Code of conduct for exports of dangerous chemicals (1986)
Verhaltenskodex für die Ausfuhr von gefährlichen Chemikalien
VCI, Verband des Deutschen Chemikalien Groß- und Außenhandels (association of the German chemical wholesale and export trade)

- Declaration on the reduced use of fully halogenated CFCs in spray cans (1987)
Erklärung über die Reduzierung des Einsatzes voll halogener Fluorchlorkohlenwasserstoffe (FCKW) in Spraydosen
Industriegemeinschaft Aerosole (IGA, industry group aerosols)

- Agreement on the manufacture and placing on the market of finger paints (1987)
Vereinbarung über das Herstellen und das Inverkehrbringen von Fingermalfarben
Verband der Mineralfarbenindustrie (association of the mineral pigments industry)

- Self-commitment not to use volatile chlorinated hydrocarbons in detergents and cleaning products (1987)
Verzicht auf leichtflüchtige chlorierte Kohlenwasserstoffe (CKW) in Wasch- und Reinigungsmitteln
IPP, FIR (formerly IHO), TEGEWA
- Declaration of ingredients according to the US CTFA system (1988)
Deklaration der Inhaltsstoffe nach dem amerikanischen CTFA-System
IKW
- Commitment not to use animal testing for finished cosmetic products and publication of a guideline on alternative methods (1989/92)
Verzicht auf Tierversuche für kosmetische Fertigprodukte sowie Veröffentlichung eines Leitfadens über Alternativmethoden
IKW
- Substitution of the softener ingredient distearyl dimethyl ammonium chloride (DSDMAC) by faster and more easily degradable substances (1990)
Ersatz des Weichspüler-Inhaltsstoffes Distearylmethylammoniumchlorid (DSDMAC) durch schneller und besser abbaubare Substanzen
IKW
- Self-commitment of the chemical industry to gradually phase out the production of fully halogenated CFCs (1991)
Selbstverpflichtung der chemischen Industrie zur stufenweisen Einstellung der Produktion vollhalogener FCKW
VCI
- Agreement between the municipality of Rotterdam and the German chemical industry association VCI (1991/1995/2000)
Vereinbarung zwischen der Gemeinde Rotterdam und dem Verband der Chemischen Industrie
VCI
- Self-commitment of the chemical industry on the take back and recovery of CFCs and waste oils from refrigerating and air conditioning equipment (1990)
Selbstverpflichtung der chemischen Industrie zur Rücknahme und Verwertung von FCKW und Altölen aus Kälte- und Klimageräten
VCI
- Declaration on the reduction of burdens on water through EDTA (1991/2000)
Erklärung zur Reduzierung der Gewässerbelastung durch EDTA
VCI, TEGEWA, IHO, Fachverband der photochemischen Industrie e. V. (since 7 May 2002 renamed to Chemieverband Imaging und Photo e. V.)

- Voluntary notification of frame formulations of detergents and cleaning products to the German Federal Health Office and poison control information and treatment centres (1993)
Freiwillige Mitteilung der Rahmenrezepturen von Wasch- und Reinigungsmitteln an das BGA und die Informations- und Behandlungszentren für Vergiftungen
IKW
- Recommendations for the use of musk xylene in cosmetic products and in detergents and cleaning products (1993)
Empfehlungen zum Einsatz von Moschus Xylol in kosmetischen Mitteln sowie in Wasch- und Reinigungsmitteln
IKW
- Commitment not to use large containers for per acetic acid (1994/96)
Verzicht auf Großgebilde für Peressigsäure
IHO
- Code of practice to ensure consumer safety in connection with carton packs for detergents and cleaning products (1995)
Code of Practice zur Gewährleistung der Verbrauchersicherheit bei Giebel-Karton-Verpackungen für Wasch- und Reinigungsmittel
IKW
- Self-commitment of manufacturers of XPS to changeover to HCFC-free insulating boards (1996)
Selbstverpflichtung der Hersteller von XPS zur Umstellung auf H-FCKW-freie Dämmplatten
VCI
- Self-commitment of the chemical industry to reduce energy-related CO₂ emissions (1996)
Selbstverpflichtung der chemischen Industrie zur Reduktion der energiebedingten CO₂-Emissionen (1996)
VCI
- Self-commitment to pass on detailed information to consumer or environment organisations in respect of genetically engineered enzymes (1996)
Selbstverpflichtung zur detaillierten Informationsweitergabe an Verbraucher- oder Umweltorganisationen bezüglich gentechnisch hergestellter Enzyme
IKW

- Self-commitment of the chemical industry on the recording and assessment of substances (in particular substances used as intermediates) to improve information on chemicals (1997)
Selbstverpflichtung der chemischen Industrie zur Erfassung und Bewertung von Stoffen (insbesondere Zwischenprodukte) für die Verbesserung der Aussagefähigkeit
VCI
- Self-commitment on agents to protect wood against wood-destructive and wood-discolouring organisms (1997)
Selbstverpflichtung zu Mitteln zum Schutz von Holz gegen holzzerstörende und holzverfärbende Organismen
VCI, *Deutsche Bauchemie, Verband der Lackindustrie*
- Self-commitment of detergent manufacturers to provide the German federal environment agency with information on enzymes used in detergents and cleaning products (1997)
Selbstverpflichtung der Waschmittelhersteller zur Auskunft gegenüber dem Umweltbundesamt über die in Wasch- und Reinigungsmitteln eingesetzten Enzyme
IKW, AMFEP (European Association of Manufacturers and Formulators of Enzyme Products)
- Self-commitment of detergent manufacturers to label the yield of all detergents (1997)
Selbstverpflichtung der Waschmittelhersteller zur Kennzeichnung der Reichweite aller Waschmittel
IKW
- Self-commitment for the classification of textile auxiliaries according to their relevance to waters (1997)
Selbstverpflichtung zur Klassifizierung von Textilhilfsmitteln nach ihrer Gewässerrelevanz
TEGEWA
- Notification procedure for cosmetic frame formulations to the central office IKW for poisonings at the federal institute for health protection of consumers and veterinary medicine (BgVV) (1997)
Meldeverfahren kosmetischer Rahmenrezepturen an die Zentralstelle IKW für Vergiftungen beim BgVV
IKW
- Brochure "Washright" - "Washright" Campaign (1997)
Broschüre "Richtig Waschen" - "Washright"-Kampagne

IKW

- Self-commitment on the reduction of poorly degradable chelates in the photo sector (1998)
Selbstverpflichtung zur Reduzierung schwer abbaubarer Komplexbildner in der Photobranche
Fachverband der Photochemischen Industrie e. V. (since 7 May 2002 renamed to Chemieverband Imaging und Photo e. V.)
- Self-commitment not to use alkyl phenol ethoxylates (APEO) in polyacrylamide emulsion polymers for purposes of waste water and sewage sludge treatment (1998)
Selbstverpflichtung zum Verzicht auf den Einsatz von Alkylphenoethoxylaten (APEO) in Polyacrylamid-Emulsionspolymeren zum Zwecke der Abwasser- und Klärschlammbehandlung
TEGEWA
- Industry-specific regulation "Cements and products with low chromate contents" (1998/2002)
Branchenregelung "Chromatarme Zemente und Produkte"
Deutsche Bauchemie
- Exclusion list for printing inks and related products (1999/2001)
Rohstoffausschlussliste für Druckfarben und zugehörige Produkte
Verband der Mineralfarbenindustrie, Verband der Druckfarbenindustrie (association of the printing ink industry)
- Further development of the self-commitment of the chemical industry within the climate protection agreement of German industry dated November 2000 (2000)
Weiterentwickelte Selbstverpflichtungserklärung der chemischen Industrie im Rahmen der Klimaschutzvereinbarung der deutschen Wirtschaft vom November 2000
VCI