Business Self-Regulation:
How To Design Monitoring and Compliance Institutions

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Structure

1. Background to the paper
2. Why business self-regulation may matter
   a) Rationalist approach
   b) Reflective approach
   c) A dilemma of institutional design?
3. Transparency vs. learning
   a) The Global Compact Initiative
   b) Responsible Care
4. Relation with public regulation
1. Background

- "Regulatory Gaps" that may be exploited or filled through private sector activity
- Business self regulation as a "soft" mode of governance
  - Voluntary accession
  - Patchy monitoring
  - No sanctioning
- Debate on significance of BSR
  - Greenwashing vs. Upgrading Scenario
An „Upgrading“ Scenario

- **Limits of state regulation**
  - Limited territorial reach of national rules
  - Problem of interest group „capture“
  - Difficulty of arriving at meaningful international agreements in regulating business

- **Potential of self-regulation**
  - Greater flexibility, less adversarial than state reg.
  - Low accession hurdles through „soft“ character
  - Potential of entrapment:
    a) through peer / public pressure
    b) through learning / reorientation
2. Why BSR may matter

- **Overarching question:**
  - Why would business actors enter into and comply with commitments enshrined in voluntary self-regulation?

- **External Dimension**
  - Changing business environment

- **Internal dimension**
  - Peer review and socialization
2a) Rationalist approach

• **Changing business environment**
  - Civil society activism and consumer boycotts
  - Regulatory threats
  - Market opportunities / „conscientious consumers“
    ➤ *Transparency as key challenge*

• **Design recommendations**
  - Define standards precisely
  - Monitor behaviour frequently
  - Make final and binding judgements on performance / compliance
  - Allow publicity
2b) Reflective approach

• Changing business environment
  - Global epistemic community that posits standards of appropriate behaviour
  - Diffusion of discourse through management courses, business schools, CSR initiatives, etc.
    ► Awareness and commitment as key challenges

• Design recommendations
  - Define standards loosely
  - Use monitoring as a learning laboratory
  - Avoid final and binding judgements
  - Avoid publicity
2c) A dilemma or just a problem?

- Ontologically: a dilemma
- Practically: a problem
  - Coexistence of transparency and learning within many CSR initiatives
  - Variants of combining transparency and learning
    a) sequential
    b) procedural / substantial
    c) actor types

► Search for astute institutional designs
3a) Transparency vs. learning: GC

• Transparency
  - Public commitment to GC principles (CEO letter, GC website)
  - Reporting on activities ('Communication on Progress'); inactive members may be 'de-listed'
  - Integrity measures in cases of „systematic or egregious violation of GC principles“
  - No regular monitoring of members

• Learning
  - GC learning forum: exchange of best practice
  - Annual policy dialogues
3b) Transparency vs. learning: RC

- **Transparency**
  - Reporting on emissions and activities in environmental protection
  - Peer review and binding judgements on results
  - Follow up: 'management' of implementation problems is key; expulsion as last resort
  - More advanced systems in Canada / US
    - Reviewing by outside experts
    - Results made public
    - Community awareness and consultation programmes

- **Learning**
  - Limited degree of best practices exchange
3c) Combinations of transparency & learning

• **Global Compact:**
  - Integrity measures and CoP monitoring relate to procedural aspects only
  - No debate on substantial achievements, no regular assessment of overall performance
  - Learning fora / policy dialogues as in-camera settings allowing for socialization and learning

• **Responsible Care:**
  - Increasing procedural and substantial monitoring and peer / public review of performance
  - Exchange of best practices as secondary aspect
4) Combination with public regulation

• **Responsible Care**
  - Initially designed to avert public regulation under condition of „dark“ shadows of hierarchy
  - Increasing recognition as signifier for ecologically sound conduct
  - De facto standard for e.g. emission levels, „due diligence“ in Canadian and US contexts

• **Global Compact**
  - Designed to encourage business contributions under conditions of weak / failing public regulation
  - Unclear signification function
  - Weak or non-existent link with national regulation