

ANEC position on the revision of the Directive 98/34 of the EP and the Council of 22 June 1998 laying down the procedure for the provision of information in the field of technical standards and regulations

Executive summary

ANEC broadly welcomes the intention of the European Commission to revise the Directive 98/34. Bearing in mind the commitment of the European Commission for a better governance and enhancement of transparency as well as the ANEC comment on the Commission's Communication on the *Role of standardisation in EU policies* (ANEC2003/GA/054),

- ANEC supports the extension of the Directive 98/34 to services while stressing the need for priority-setting by public authorities and stakeholders;
- ANEC objects to reference *New Deliverables* in European legislation, in particular when dealing with health, safety, environment and basic legal and economic interests of consumers;
- ANEC supports laying down the principles of standardisation in the Directive 98/34 and calls for adding balanced representation to the list of principles;
- ANEC calls for a legally binding act committing Member States to benchmarking and the provision of adequate structures and earmarked funds for consumer participation in standardisation at national and European level;
- ANEC calls for opening the meetings of the Member States Committee to consumer participation whenever issues of consumer relevance are discussed because the inherent purpose of Directive 98/34 is to increase the transparency of rules.

Background

ANEC broadly welcomes the intention of the European Commission to revise the 98/34 Directive in order to extend its scope to services and to lay down the European standardisation principles in a legally binding act.

In its current form, the 98/34 Directive obliges EU Member States to communicate to the European Commission all new draft technical regulations. This obligation covers all products as well as Information Society services. The Directive also established a procedure for the provision of information for product related standards. The Directive contains a number of definitions, for instance the term *standard* as well as the option for the European Commission to give standardisation mandates to the European Standards Organisations (ESOs).

Bearing in mind the commitment of the European Commission, for a better governance and enhancement of transparency as well as the ANEC comment on the Commission's Communication on the *Role of standardisation in EU policies* (ANEC2003/GA/054), ANEC is of the opinion that:

1. Extension of the scope of the 98/34 Directive to services

ANEC supports the extension of the scope of the Directive to services given the enormous importance of services for the European consumer. However, equally important is to **ensure the co-ordination of the different Commission activities** in this sector given that DG SANCO is responsible for safety of services, DG Internal Market for services of general interest and DG Enterprise for services standardisation.

With respect to safety of services, ANEC calls for a **legislative framework at European level underpinned by formal standardisation** to address the detailed specifications and guidelines. The issue of safety of services is too important an issue for consumers to leave it entirely to voluntary agreements or self-regulation (ANEC2003/COORD/042).

Last year, ANEC also welcomed the European Commission's efforts to develop a strategy for the role of standards in the services sector and expressed its willingness to participate in this process. However, ANEC is of the opinion that it is the role of **public authorities to decide on the priorities in the services area** for which the European Commission will issue standardisation mandates to the ESOs.

In any event, the need for standardisation should be based on **broad stakeholder input** and sector specific studies so that work is only commenced after having identified the need and feasibility of a services standard. We also believe that there is a need for a **monitoring system on services** in the ESOs to ensure the consideration of balanced stakeholder views. To achieve this, ANEC recommends setting up a **European Commission working group on services standardisation** open to stakeholder participation.

2. Priorities in services

With safety of services as the overall priority, so far ANEC decided to closer investigate services related to tourism, in particular mass accommodation and sports and leisure activities because they are of major concern to consumers. These include for **mass accommodation**: Fire safety in hotels, safety related to balcony, gas appliances, playgrounds on accommodation facilities as well as personal security, and food hygiene and safety; with respect to **sports and leisure activities**: Swimming in swimming pools, horse riding and skiing/snowboarding.

3. New Deliverables

Technologies and processes continue to emerge at a rapid pace. The product and technology life cycles have never been shorter. Most often, the formal standards-making process is too slow to produce the standards required by the market in due time. This is particularly prevalent in the ICT area. Hence, there has been a mushroomed growth of several hundred informal standards consortia producing their own technical specifications. Informal standardising bodies may establish a closed group, often for commercial benefit. The output may not be publicly available. In general, transparency and the lack of consensus involved raise concern.

The ESOs also took action to meet market needs by developing so called *New Deliverables* such as the CEN Workshop Agreements (CWAs). ANEC recognises the need expressed in some areas by the market to develop specifications in a faster way than possible with formal European standards. **We do, however, object to reference *New Deliverables* in European legislation, in particular when dealing with health, safety, environment and basic legal and economic interests of consumers.**

The main reason for this position is inherent in the characteristics of *New Deliverables*, for instance CWAs. First of all, they do not require full stakeholder participation. Public enquiry is possible but not mandatory. CEN members are not responsible for the content. Last but not least, the lifetime of CWAs is limited to three years. Even though transformation into another deliverable is not excluded, the former Workshop participants might decide to withdraw the CWA.

4. Principles of standardisation

ANEC appreciates and strongly supports the Commission's intention to specify in the Directive 98/34 what principles the ESOs are expected to observe. The Commission mentions openness, transparency, consensus, full participation of all stakeholders and coherence. We urge the Commission to **add the principle of balanced representation**. This is of utmost importance whenever the public interest is concerned, in particular when standardisation mandates are issued.

ANEC also attaches particular importance to the principle of full participation of all stakeholders. With respect to the proper functioning of the European standardisation system, which is based – in the case of CEN and CENELEC – on national representation, it is vital that all National Standards Bodies (NSBs) from the new Member States are integrated in the system according to the same criteria as the current members. Equally important is that the NSBs, in particular in the new Member States, encourage and support the involvement of all interested parties, including consumers. Otherwise, there is the **potential risk of a lack of proper consensus building at the national level**, which may undermine the credibility of European standards.

The findings of the 2001 ANEC study on national arrangements for consumer participation in standardisation show that the main obstacle for consumer

representation is the lack of funding. This result was confirmed by a recent study that the European Commission, DG SANCO, conducted on the same topic in November 2003.

Therefore, **ANEC calls for a legally binding act committing Member States to provide adequate structures and earmarked funds for consumer participation in standardisation at the national and European level.** In the same context, a regular exchange of information on the national arrangements for consumer participation in standardisation would enhance transparency and allow for a benchmarking exercise.

5. Transparency of the 98/34 Committee

The inherent purpose of the Directive 98/34 is to increase the transparency of rules. This does not only require openness and accessible information on the part of the national authorities, but also that it should be possible for particularly concerned parties such as consumers to be able to contribute their expertise.

Therefore, **ANEC calls upon the European Commission and Member States to open the meetings of the Standing Committee** established under the 98/34 Directive (Art. 5) to stakeholder participation, in particular:

1. ANEC calls upon the Commission to invite consumers to attend those parts of the meetings when consumer issues are discussed. This is common practice with a number of Member States Committees under the auspices of DG SANCO.

Access to discussions in the 98/34 Committee is of particular importance to ANEC with respect to standardisation mandates (Art. 6 (3)). Recently, the Commission published a Working Paper on the *Role, preparation and monitoring of standardisation mandates within the framework of European Policies*, in which the Commission states that “before a mandate is submitted to Committee 98/34, the various parties involved must be consulted informally in order to make sure that this mandate will be accepted and will produce results that are acceptable”.

ANEC also considers it important that the 98/34 Committee has a systematic role with the follow-up of mandates, in particular when the public interest is concerned, and takes account of the view of sectorial Committees where existing.

2. The Directive foresees meetings twice a year with the ESOs and NSBs (Art.6.1). ANEC urges the Commission to consider CEN Associates, such as ANEC, as experts in accordance with Art. 6.7 and to invite them to these enlarged meetings.

To facilitate all of this, the **agendas and relevant documentation should be made available to concerned parties.** Certainly, this would enhance the dialogue with civil society partners and the transparency and accountability of the Committee’s work, which seems even more important considering the envisaged extension of the scope of the Directive 98/34 to services.