



Position Paper

Communication from the European Commission

**‘Towards an increased contribution from standardisation
to innovation in Europe’**

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1. Preface

ANEC welcomes this review of the contribution of standardisation to innovation and competitiveness in Europe. But it should not be forgotten that economic activity does not take place in isolation for a self-serving purpose but to create wealth and improve the welfare of all in society. Hence it is disappointing that the Communication places emphasis on the importance of standardisation in supporting European industry and the access which the process affords to industrial partners.

It is also hard to understand the reasons here for the Commission deciding to increase the financial support it provides to Small and Medium-sized Enterprises (SMEs) in standardisation – a subset of business interests after all - when elsewhere it is considering cutting the support it gives to consumers representing the public interest.

Consumer representation in European standardisation is dependent upon full public funding. At a time when the principles of the New Approach appear to become more encompassing through adoption of the 'Internal Market for Goods Package' under the co-decision procedure, it is astonishing the Commission should be seeking to reduce – and not strengthen – the public interest representation in European standardisation.

2. Selective Commentary

In recalling the contribution of European standardisation to innovation and competitiveness, the Communication notes the EU has “an active standardisation policy that promotes standardisation in support of Better Regulation”.

Although ANEC recognises the contribution European standardisation has made to removing technical barriers to trade, especially in support of the New Approach, we do not believe that standardisation necessarily offers the expected level of consumer protection. For example, we recollect that DG Enterprise was often critical of the level of protection offered by the principal European Standard for toy safety (EN 71) – particularly on the choking hazards presented by long hairs and small balls in toys – long before the ‘summer of recalls’. Hence we regret that the New Approach appears about to become the template for future product legislation after the adoption of the ‘Internal Market Package’ by the European Parliament on 21 February 2008.

ANEC believes the New Approach and the consequent use of standardisation must be applied case-by-case, and a decision to make reference to standards must take into account the risks to the health and safety of the individual. We also believe the introduction of a comitology procedure in the New Approach to be essential in order to allow the directives to be adapted quickly to new developments, so avoiding a long co-decision process or a standardisation procedure.

Moreover, the freedom allowed to industry by the New Approach to self-regulate through standards needs to be accompanied by an obligation to provide the highest level of protection to consumers that is economically and reasonably possible.

We trust that the Council will be bold enough to provide a clarification of the proposal to meet our concerns before the ‘Internal Market Package’ becomes European law.

Most seriously, ANEC does not believe the New Approach has delivered a system of market enforcement of the depth or effectiveness needed to complement the framework of European legislation and standardisation. We understand the national surveillance and inspection authorities on whom the responsibilities lie do not have the resources to police the market in the manner that consumers expect or believe to exist. And the systems of enforcement are not equitable from country to country. Europe may believe it has sound product legislation and technical standards but both become worthless without proper enforcement.

ANEC believes that the Commission needs to take an initiative to ensure a European approach to market surveillance and inspection, both in resourcing and management. We believe that the market surveillance of consumer products is too important to be left as an issue for subsidiarity.

The Commission commits to issuing requests for the development of standards to support Directive 2005/32/EC on the eco-design of Energy-using Products (the EuP Directive).

This commitment and the preamble in the Communication gives cause for concern. The EuP Directive is proving a welcome innovation in the development of European legislation. We are of the fundamental opinion that the provisions of the Directive should not be diluted through delegating requirements now set at the political level to the European Standards Organisations. Eco-label criteria cannot be a matter for self-regulation if the Eco-label and similar instruments are to be testing and meaningful.

The Communication recognises the value of European Standards in achieving some broader public policy objectives through their use in public procurement.

ANEC welcomes this recognition. Public procurement is a key sector of the European economy, representing 16,3% of EU GDP in 2006. The harmonisation of procedures for concluding contracts is a major achievement of the Internal Market. According to the Public Procurement Directives, accessibility requirements can be integrated in the technical specifications of contract documentation for public bids¹. The role of European Standards in defining accessibility requirements in public procurement contracts provides a vital opportunity for bringing accessibility into the mainstream to the benefit of elderly and less able consumers.

The Communication notes that standards are key enablers for societal applications of ICT, such as e-Identity, e-Health and RFID. It then calls on standards bodies – both formal and informal – to find ways to co-operate further. It also calls on the ESOs to develop less formal standardisation deliverables.

ANEC is concerned that the use of less formal deliverables will preclude the public interest from being reflected in the development of specifications to support broader policy issues outside the New Approach. The application of technologies in the fields of e-Identity, e-Health and RFID need to reflect consumer concerns. For instance, the everyday use of RFID technologies – especially within the context of the ‘Internet of Things’ – poses risks to data privacy, data security and human health. But it is clear the preference for industry is for consumers to have to ‘opt out’ of the use of these technologies rather than ‘opt in’². The perceived wish of the Commission for informal standards developers to take the lead in the setting of these specifications would see a fragmentation of the European standardisation landscape making it even harder for public interest groups to participate and have influence.

Unless the Commission can satisfy itself that such an alternative standards-setting forum offers both open participation and balanced decision-making, ANEC believes that the formal European standards bodies should remain the exclusive partners of the Commission in the provision of deliverables to support both European legislation and broader public policies, despite their imperfections.

The European standards bodies should be encouraged to collaborate more closely with consortia, and consortia should be encouraged to view the European standards bodies as the means for their standards to receive a ‘formal European endorsement’. It should be promoted and perceived as a ‘win-win’ situation.

But a pre-requisite is that such ‘formal European endorsement’ must be both genuine and testing. The ‘fast-track’ procedures of ISO/IEC – which amount to little more than rubber stamping of proprietary specifications – must not be repeated at European level. The proposed adoption last summer of a private standard through fast-track as ISO/IEC 29500 ‘*Information technology – Office Open XML file formats*’ questioned the credibility of the formal standards system.

¹ Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134/114 of 30 April 2004.

² See ANEC/BEUC position paper of 28 April 2008 ‘Radio Frequency Identification (RFID) - Draft Commission Recommendation on the implementation of privacy and information security principles in applications supported by radio-frequency identification – “RFID Privacy and Security Recommendation”’.

Nor should the use of less formal deliverables by the ESOs be considered any more reassuring to the public interest. 'Less formal' is a euphemism for 'faster'. And more speed in the meetings-driven environment of standardisation can only be achieved through pursuing a 'more limited consensus' which, by definition, must exclude some interested parties, often those representing the public interest.

If the ESOs are to be asked to pursue less formal deliverables in support of areas of public policy, then the direct participation of public interest groups must be ensured.

In order to achieve greater democracy in the standards development process, both at European and international level, ANEC calls for a wider and deeper application of IT solutions in the process. For the most part, the standards bodies have used IT tools simply to facilitate the traditional committee methodology. But, in order to achieve a more open process of standards development (and to reduce development times), internet technologies should be further embraced in what has been termed the 'Wiki Way of Working'. Some in the standards bodies claim that this would lead to a 'flood' of undisciplined participation but, in reality, it is likely that only formal European and international associations, now at the margins of the system, would be motivated to participate.

In the development of standards for the global market, the Communication calls on the ESOs and NSBs to facilitate contributions to international standardisation.

ANEC recognises the focus of European industry on the development of international standards is a consequence of globalisation. It should not be forgotten, however, that there is no obligation on members of ISO/IEC to implement International Standards at national level. By contrast, national members of CEN/CENELEC must implement European Standards. Moreover, in order to achieve 'global relevance', International Standards may not always be as demanding in their requirements as the European market expects or requires. This is of special importance if an International Standard is to be the basis of a European Standard supporting European legislation or broader public policies.

Hence ANEC stresses the importance of a European mirror structure through which all European interests can participate in order to influence the discussion at the international level. Participation of all interests at the international level is often not possible due to the costs involved and/or an ineligibility to participate directly in the international process.

ANEC insists that the existing provisions for International Standards and European Standards to be adopted in parallel through the Vienna Agreement and the Dresden Agreement be maintained. We do not believe the direct recognition of International Standards at European level would be in the public interest as there may be times when an International Standard is inadequate to serve European regulatory needs.

The Communication stresses the importance of ensuring access to standardisation for SMEs, users/consumers and researchers. It adds the Commission seeks a balanced representation of stakeholders in standardisation.

ANEC has long called³ on the European standards bodies to reform their processes and procedures in order to ensure a more balanced participation and decision-making in their technical structures. However, the influence of national standards bodies in CEN and national electrotechnical committees in CENELEC, and the pre-eminence of national business models in both of these organisations over a deepening commitment to European and international standardisation, has not made change forthcoming.

The focus on national delegations makes it impossible for the composition of a related European committee to be fair to all parties and, without ANEC acting at European level, it is unlikely that consumer interests would be taken into account. The situation is still not equitable, however, as the 260 experts whose participation ANEC is able to facilitate in the three European standards bodies are met by 60.000 experts in CEN alone⁴, most of whom are from industrial interests.

CEN and CENELEC emphasise that the national delegations are required to convey a consensual view in their positions. They also stress that the public comment phase, through which all draft European Standards must pass, ensures that all stakeholders not represented directly in the committee can express a view. But with ninety-two per cent of the costs of European standardisation being met by industry⁵, industry is able to dominate discussions in the committees and is well-placed to influence the content of standards.

Moreover, less engaged groupings at national level are not aware of the existence of the public comment phase. Indeed, it would be interesting to know the usual number of respondents submitting comments on a draft European standard to the national members of CEN and CENELEC and their background. ANEC suspects the number of comments is few and often from the interests that contributed to the development of the standard.

ETSI is not based on national delegations but its direct membership naturally favours participants from industry and, often, multinational companies.

Furthermore, consumers and other public interest stakeholders who find themselves placed at the periphery of the system, find it difficult to access draft standards or even to find information about draft standards. Most NSBs (including AFNOR, BSI and DIN⁶) fail to make drafts freely available and information about standards is sometimes seen as an 'added value' (and chargeable) service.

The national orientation of CEN and CENELEC also means that the associations are restricted from supporting the needs of the European market. It is not in the interests of a national standards body to support development of a European (or International) standard, where there will be peer competition for sale of a common product, if the market need can be satisfied by the development of a national standard, particularly if that standard is able to command the status of a *de facto* international standard.

³ For example, ANEC position paper 'Proposals for improving public interest stakeholder participation in CEN and CENELEC' (document ANEC-GA-2006-G-004)

⁴ Source: CEN promotional poster

⁵ Source: Roland Berger study conducted for CEN in 1999

⁶ Source: On-line catalogues

The Communication commits to increase substantially the financial support to European coordination of SME representation in standardisation.

ANEC presumes this commitment is to enable NORMAPME to financially support the representatives of SMEs in the standardisation process (through meeting their travel, accommodation and subsistence expenses). This is the model DG SANCO has used since the creation of ANEC in 1995. Although this funding has enabled consumer representatives to participate in the development of European standards, and has led to some notable victories in the consumer interest, as noted earlier, ANEC remains able to afford no more than 260 experts across the three ESOs. So, although this additional support for NORMAPME should help to offset the dominance of large companies in the standardisation process, it should not be seen as an alternative to reform of the European standardisation system.

As noted in the introduction to this commentary, economic activity does not take place in isolation for a self-serving purpose but in order to create wealth and improve the welfare of all in society.

Hence ANEC finds it strange that, at the same time that the Commission is deciding to increase substantially the financial support it provides to SMEs in standardisation, it is seeking to reduce the financial support it provides to consumers. At the moment, there is no certainty the Commission will fund ANEC beyond the end of the current Consumer Programme in 2013, and certainly not at the present level. Without public funding, consumer representation in standardisation will disappear.

It is somewhat incomprehensible that the Commission appears to prefer to support SMEs – industry after all – rather than an association which represents the public interest, especially when it seems the New Approach will be extended to almost all product areas. This criticism is not directed at NORMAPME or the SMEs – as ANEC knows SMEs face similar problems to consumers in influencing the standardisation process – but seeks to urge the Commission to continue to support the public interest of European consumers alongside the weaker voices of the industrial sector.

The Commission invites the standards bodies to publish the abstracts of European Standards systematically and without restriction on access. The Commission also intends to build on the study on access to standardisation with a call to the European and national standards bodies to achieve the ultimate goal of free access to standards developed in support of EU legislation and policy.

ANEC welcomes the call made to the standards bodies to make abstracts available without a restriction on access (we presume this to mean free of charge). As noted earlier, many NSBs fail to make drafts freely available and information is sometimes seen as an ‘added value’ (and chargeable) service. ANEC also welcomes the study on access to standardisation and is pleased to be a member of the steering group.

Although ANEC could be expected to support free access to adopted harmonised standards and to other published standards underpinning broader public policies, we do have serious reservations. The business model of CEN and CENELEC members permits a free participation in the European standards development process which is funded mostly from the sale of standards (national, European and International) and membership fees. This is a finely balanced equation and removal of one source of income could see the introduction of participation fees that would pose a further obstacle to access for those representing the public interest.

Moreover, the free availability of the harmonised standards would put huge and perhaps unavoidable pressure on NSBs and National Electrotechnical Committees to make all standards freely available, so further undermining free access to the standards development system.

There is a danger that ‘the baby would be thrown out with the bath water’.

Of course, ETSI is cited as the classic counterexample as its deliverables are freely available for download through the internet. But it is a prerequisite for those wishing to participate directly in the ETSI process to have membership of the institute or ‘pay to play’. Although ANEC is a member of ETSI, the use of membership categories and weighted voting at all levels in the organisation mean that the consumer voice is no stronger in ETSI than it is in CEN and CENELEC and, for some issues, less strong.

Without a radical restructuring of the European standardisation system and business models of the CEN and CENELEC members (it must not be forgotten that all are also national bodies in their own rights and most are also members of ISO or IEC), it is impossible to see the free availability of some European standards leading to the benefits the Commission clearly believes are possible and yet the dangers are all too evident, especially those posed to the public interest.

But such restructuring – which would have to go beyond the present question of free availability and address other fundamental issues such as the need for balanced decision-making – will not happen voluntarily. Indeed, the Commission should offer to fund a study into how the European standardisation system could be restructured to make it more accountable, more efficient and more effective.

As a short-term measure, ANEC thinks the Commission should require the members of CEN and CENELEC to allow the Central Secretariats to sell European Standards. Pre-eminent national interests mean that the Brussels-based secretariats cannot make drafts of European Standards available or sell European Standards (even though the CEN/CENELEC Internal Regulations recognise that the “CEN/CENELEC publications exist in their own right”⁷). This does not help promotion of European standardisation as a tool to aid competitiveness and innovation, either at European level or on the global stage. As in ISO/IEC, direct sales from the Central Secretariats could be used to compensate future national membership fees from the countries to which sales are made.

The Commission encourages the ESOs to be ambitious in their reform efforts and to address involvement of stakeholders in governance of formal standardisation.

ANEC welcomes this initiative as a complement to improving access and influence at the technical level in the ESOs.

Although ANEC is an Associate of CEN and Co-operating Partner of CENELEC, we sit only as observers in the General Assemblies and Technical Boards of both bodies and the open session of the CEN Administrative Board (‘CEN/CA Part II’ meeting). We have no access to the papers or the meetings of the CEN/CA Part I or CENELEC Heads of Delegation. This means the public interest voice in the political or strategic direction of CEN and CENELEC is weak or non-existent.

⁷ Clause 10.1, CEN/CENELEC Internal Regulations – Part 2 : 2006

ANEC is a full member of ETSI and a voting member of its General Assembly. But it is accorded no special status as a European or public interest association (ANEC is a member of the Belgian delegation). Moreover, ANEC is allocated no more than a single vote when a large multinational member can receive several hundred votes.

Changes to the rules for election to the ETSI Board agreed at the 51st ETSI General Assembly (March 2008) also make it less likely for a consumer representative to be elected to a reserved 'user' seat on the Board.

ANEC believes this treatment of public interest stakeholders could call into question the qualification of ETSI as one of the three European Standards Organisations.

Acknowledgements

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APPENDIX – About ANEC and other documentation

A.1 About ANEC

ANEC is the European Consumer voice in standardisation, representing and defending consumer interests in standardisation and certification, and in policy and legislation related to standardisation. Our aim is a high level of consumer protection. ANEC was set up in 1995 as an international non-profit association under Belgian law. It represents consumer organisations from the European Union Member States and the European Free Trade Association (EFTA) countries. Our General Assembly is composed of one national member per country, nominated jointly by the national consumer organisations in their country.

A.2 Contact person at the ANEC Secretariat

Stephen Russell, ANEC Secretary-General

More information about ANEC and its activities is available at www.anec.eu

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