



# **ANEC Contribution to the European Commission's Consultation on the Implementation of the Services Directive**

**August 2010**

**ANEC-SERV-2010-G-036**

## SUMMARY

On the occasion of a Commission's consultation on the implementation of the Services Directive, ANEC reiterates its call for a horizontal legislative framework covering the safety, quality and liability of services to be developed. Such a frame should make use of the comitology procedure and be complemented by a stakeholder review process. The framework could then be underpinned by formal voluntary standardisation. Such framework should follow a 'quasi-New Approach model', like the European Ecodesign Directive<sup>1</sup>.

Moreover, while the 2006 Services Directive encourages the development of voluntary standards to ensure quality of service provision, service standards suffer from incomplete coverage of key consumer aspects. Such core consumer elements in service standards are outlined in this paper.

Finally, we call for more transparent, inclusive and democratic standards-making process to be developed as a prerequisite for further service standardisation. In particular, the rights of societal stakeholders should be considerably strengthened in the Standards Bodies.

---

<sup>1</sup> Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products (recast), replacing Directive 2005/32/EC and extending the scope to energy-related products

## INTRODUCTION

The European Commission has recently launched a consultation in the context of the "mutual evaluation process" foreseen by Directive 2006/123/EC on services in the internal market (so-called Services Directive). The aim of the consultation is to receive feedback from interested parties as to their assessment of national measures implementing the Directive as well as other national provisions applicable in the area of services. Only certain types of measures relating to requirements imposed either on the establishment of service providers or on the cross border provision of their services are concerned.

Although the ongoing consultation does not relate to issues of consumer relevance, ANEC sees it as a good opportunity to reiterate its concerns about the inadequacy of the Services Directive to ensure a high level of safety to European consumers and reiterates its call for a European policy framework to be developed for the safety of services.

## INADEQUACY OF THE SERVICES DIRECTIVE

Consumer services are offered across an increasingly wide range of areas, such as recreational services, repairs, postal and tourism services. Many of these services are offered to consumers during their stays in other Member States and the adoption of the Services Directive in 2006 lead to a growing number of services being provided cross-border.

A study commissioned by ANEC and published in April 2007<sup>2</sup> shows that despite the fact that many of these services pose health, financial or safety risks to consumers, there is still no common European regulatory approach to ensure the safety and quality of these services. The study also shows that the Services Directive overlooks safety matters whilst explicitly encouraging<sup>3</sup> the development of voluntary standards and codes of conduct to ensure quality of service provision. However, the study's review of a selection of service standards demonstrates that these standards suffer from incomplete coverage of key consumer aspects in standards.

ANEC considers the current European policy on services and service standardisation<sup>4</sup> does not ensure a high level of safety for European consumers.

---

<sup>2</sup> The full study is available at: <http://www.anec.eu/attachments/ANEC-R&T-2006-SERV-004final.pdf>

<sup>3</sup> Article 26(5) of Services Directive: "Member States, in cooperation with the Commission, shall encourage the development of voluntary European standards with the aim of facilitating [...] information to the recipient and quality of service provision".

<sup>4</sup> See ANEC position on service standardization, <http://docushare.anec.org/docushare/dsweb/Get/Document-51511/ANEC-SERV-2007-G-061final.pdf>, October 2007

## **NEED FOR A HORIZONTAL REGULATORY FRAMEWORK FOR SERVICES**

The services sector is too important in terms of the safety, health and financial security of consumers for it to be left solely to voluntary standards or codes of conduct as currently the case. Standards should thus not be seen as a replacement for legislation but, rather, as a complementary tool. ANEC therefore questions the direction taken by the European Commission to shift responsibility in this field to European Standards Bodies.

In this context, we call on the European Commission to introduce a horizontal legislative framework covering the safety, quality and liability of services, which is to be underpinned by formal standardisation. Such a legislative framework should follow the approach taken in the field of energy-using products, by making use of the comitology procedure, complemented by a stakeholder review process.

## **FOLLOWING A 'QUASI-NEW APPROACH'**

ANEC believes that a 'quasi-New Approach' should be applied in the area of services provided that a horizontal legislative framework for the safety, quality and liability of services is first established at the European level, and provided that consumer organisations and other societal stakeholders are given a significantly stronger position in the policy making process and European Standards Bodies. This was also one of the main recommendations of the study commissioned by ANEC.

We call on the Commission to develop a framework legislation which would address the general safety of services (for example through a 'General Services Safety Directive') as well as the liability of service providers. The Commission should also elaborate a framework directive with more detailed mandatory requirements to govern the quality of services.

This approach should furthermore make use of the regulatory model used in the eco-design of energy-related products (ErP) field<sup>5</sup>, which offers flexibility, increased transparency, and stakeholder involvement whilst setting an overarching, binding regulatory framework.

In contrast to the general New Approach scheme which is applied in the product safety field, a quasi-New Approach as followed by the ErP framework Directive provides that implementing measures, to be prepared by regulatory committees, should specify the detailed requirements for various energy-related product groups. Thus standards complement this system by setting the technical, detailed specifications and test measures. An important part of this ErP approach is the setting up of a consultative stakeholder forum (so called Ecodesign Consultation Forum), which allows stakeholders to provide their contribution on the implementation of the Directive. A similar approach should be adopted in the services field.

---

<sup>5</sup> Directive 2009/125/EC establishing a framework for the setting of eco-design requirements for energy-related products

Finally, in order for any regulatory measures or standards to have a real practical impact, the suggested regulatory framework for services would need to set up strong market surveillance mechanisms and should include provisions on stricter enforcement of legislation in order to ensure industry compliance with the relevant legislation and standards.

### **WITH SERVICE STANDARDS ADDRESSING CORE CONSUMER ELEMENTS**

In order for consumers to benefit from service standards, it is necessary to define core elements which are of considerable importance to consumers in the provision of any service. Based largely on the analysis found in the study<sup>9</sup>, ANEC notes that the following six elements should be systematically considered and addressed whenever a service standard is developed<sup>6</sup>:

- *Core competences*: It is of utmost importance whether or not the service is executed by someone with the requisite skills, training, education and knowledge;
- *Equipment and premises*: This element should include not only safety (e.g. knowledge about the proper and safe use of any equipment), security and hygiene issues, but also the principle of accessibility.
- *Pre-contractual stage and contract conclusion*: This element may be understood to encompass the accessibility of services, the freedom to contract, transparency, advice and information including marketing and advertising, as well as the form of contract conclusion.
- *Content of contract*: This element is taken to include issues such as affordability, mandatory terms, quality/safety, billing and payment modalities, right of withdrawal/cancellation, compensation for improper information/incomplete performance, and liability for injury to person or damage to goods.
- *Post-contractual stage*: This element includes insolvency rules, after-sales services, cooling-off periods, dispute resolution and complaints handling, and collective redress.
- *Monitoring and inspection*: Clear-cut rules for monitoring and inspection, including constant learning process through the evaluation of customer satisfaction should be more systematically included in future standards.

Existing service standards unfortunately suffer from incomplete coverage of these key consumer aspects.

---

<sup>6</sup> For more detailed information, see ANEC position on service standardization, <http://docushare.anec.org/docushare/dsweb/Get/Document-51511/ANEC-SERV-2007-G-061final.pdf>, October 2007

## **STRONGER ROLE FOR CONSUMER ORGANISATIONS**

Before standardisation may be used further as a tool to address the safety and quality aspects of European services, consumer organisations must be granted stronger rights and duties in Standards Bodies, and should benefit from more adequate funding. This would be consistent with the Services Directive<sup>7</sup> which gives an explicit role to consumer organisations to promote the quality of service provision. In order for consumer organisations to be able to carry out such a task, however, significant changes need to be made to the current standardisation process to make it more democratic, transparent and inclusive.

Thus, ANEC calls for the idea of balanced representation - ensuring equal and fair chances for all stakeholders to influence the standardisation process and to have their views taken into account - to be explicitly mentioned in, for example, the statutes of the Standards Bodies. As previously stated by ANEC<sup>8</sup>, we consider, inter alia, that draft standards of public interest ought to be made available for comments free of charge on the internet, that significantly more transparency should be introduced in the standards-drafting process to make apparent any minority views, and that indicative voting rights should be granted to the associates/cooperating partners of Standards Bodies.

Further, in order to increase transparency in the standards-making process, and to better assess the consumer impact in that process, ANEC calls for a quality monitoring system to be implemented in Standards Bodies to assess the quality of service standards, and to match that assessment with data on balanced representation.

## **NEED FOR COOPERATION BETWEEN SERVICE REGULATION AND SERVICE STANDARDS**

As opposed to product standards, service standards affect the legal-contractual environment. It is therefore key to indicate the legal environment in which the standards exist. Unfortunately, the Commission has given European Standards Bodies a role in the shaping of consumer-related service contracts and service standardisation could thus be described as “contract-law making through the back door, i.e. by defining the rights and duties of parties and the professional environment”.

ANEC considers that, whilst standards might influence the legal interpretation of e.g. consumer contracts, standards should not and cannot replace legislation. Responsibility for setting the legal-contractual framework should thus lie with the European institutions and, in particular, the European Commission, rather than the Standards Bodies.

---

<sup>7</sup> Article 26(1) of the Services Directive

<sup>8</sup> See for example ‘ANEC proposals for improving stakeholder participation in CEN and CENELEC’, <http://www.anec.org/attachments/ANEC-GA-2006-G-004.pdf>, March 2006, and ANEC response to the public consultation of the European Commission on Standardisation, <http://www.anec.org/attachments/ANEC-SC-2010-G-017.pdf>, May 2010

Considering the above, ANEC highlights the need for increased awareness in the Standards Bodies and technical committees about the legal aspects relevant to the work at hand. Regrettably, there is currently little connection between service regulation<sup>9</sup> and service standards. ANEC thus believes that increased cooperation should take place between ANEC and BEUC<sup>10</sup>, between the various technical committees, and between the technical committees and the European Commission. Such cooperation would help to ensure that service standards take their regulatory environment into consideration.

---

<sup>9</sup> As noted in the study, the regulatory environment consists not only of European laws as such, but also of international private law rules and international conventions (e.g. in the field of air transport).

<sup>10</sup> BEUC, the European Consumers' Organisation, [www.beuc.eu](http://www.beuc.eu)

## APPENDIX – ABOUT ANEC

---

### *Raising standards for consumers*

*ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and represents consumer organisations from 31 European countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.*

*ANEC has signed the European Commission Register of Interest Representatives and accepted its Code of Conduct. Its Identification Number is 507800799-30.*

More information about ANEC and its activities is available at [www.anec.eu](http://www.anec.eu)

#### **Contact person at the ANEC Secretariat**

**Laura Degallaix**

☎ +32 (0)2 743 24 70

📠 +32 (0)2 706 54 30

✉ [laura.degallaix@anec.eu](mailto:laura.degallaix@anec.eu)

📍 Avenue de Tervueren 32, box 27 – BE-1040 Brussels, Belgium.

*This paper was drafted by the ANEC Secretariat based on ANEC members' position on Hotel Fire Safety and as described in the various ANEC position papers and comments referred to throughout this document.*