

Revised Draft Vademecum on European Standardisation

ANEC comments

General Comments

ANEC welcomed the intent of Regulation (EU) 1025/2012 to increase the transparency of the European standardisation process¹. We especially welcomed the provisions of Articles 5 and 10, as it is essential that the European associations representing consumers (and other societal stakeholders) in standardisation are provided with the means to contribute effectively to the standardisation system in order to fulfil their missions.

Similarly, we welcome revision of the Vademecum on European Standardisation to align it with the Regulation.

Although the key addressees of the Vademecum are the Commission itself and European Standardisation Organisations, we submit the following comments and questions to seek clarification on some issues from the consumer perspective.

Specific Comments

Part 1: The role of the Commission's standardisation requests to the European Standardisation Organisations

Section 3.1 Concept of a standardisation request

ANEC welcomes the confirmation that the role of a standardisation request/mandate is not to delegate political powers to the European Standardisation Organisations (ESOs). In ANEC's opinion, the role of standards should be limited to providing the technical means through which compliance with the political or legal decisions is achieved or evaluated, and to the other technical characteristics of the product or service.

In the past, there have been divergent opinions in standardisation Technical Committees as to the scientific base for the decisions taken in the setting of safety limits². When the relevant legislation is not sufficiently precise, such as the Toys Safety Directive on toys noise limits (2009/48/EC), the manufacturers' view often prevails instead of reference to scientific opinions or to the precautionary principle³. Wherever and whenever relevant, standardisation requests/mandates on the safety of products or services should indicate the age and abilities of the consumers that need to be taken into account in order to allow the risks to be correctly assessed and robust standards developed. Standardisation requests/mandates should focus on the potential barriers certain consumers may face if their needs are not properly addressed⁴.

- ANEC proposes that the Vademecum draws Commission officials' attention to this issue and the need to make reference to available scientific opinions (from European Commission Scientific Committees, etc) or to the precautionary principle, in the standardisation requests/mandates in case of unclear legislative provisions.

¹ <http://goo.gl/z8vC3d>

² <http://goo.gl/bM2aTt>

³ This was the case during development of an amendment on acoustics to the toy standard EN 71-1:2011. The amendment was adopted in July 2013 despite opposition from ANEC. The amendment does not provide adequate protection against hearing impairment caused by impulse noise from toys, and was not elaborated according to the precautionary principle.

⁴ <http://goo.gl/jApAvF>

Section 3.2 A standardisation request as an Implementing Act

It remains unclear what is the fate of a standardisation request/mandate rejected by the ESOs. The Vademecum says a mandate is now an Implementing Act. According to Article 291 of the TFEU dealing with Implementing Acts, an Implementing Act is a legal act, with binding effect. However, in case of rejection of a mandate by the ESOs, it will expire. It is unclear how a "Commission binding act" - which is not a contract - can expire simply because it is not accepted by the addressees of the decision.

Our concern here is regarding the implementation of the General Product Safety Directive (GPSD). Before the entry into force of the Standardisation Regulation, the Commission Decision - which specified the safety requirements a European standard should reflect - was not legally-binding ("decision sui-generis"). It should be noted that, given the wide scope of the GPSD, it is essential to stipulate in the Commission Decision which safety requirements have to be respected by the standards to be drafted. It is unclear to us what happens if a standardisation mandate containing safety requirements is not (or only partly) accepted by the ESOs. As the ESOs are not obliged to accept a mandate and the use of standards is voluntary, there is no legal certainty for economic operators and market surveillance authorities on the safety requirements of a certain product, despite a standardisation request now being a legal act.⁵

- ANEC proposes the Vademecum clarifies the legal status of a rejected standardisation request/mandate.

Section 4.6 Role of European stakeholder organisations financed by the Union

We have already expressed our appreciation at the systematic way in which EC services consult us (and other stakeholders) on the draft standardisation requests/mandates. This ensures the consumer point of view can be taken into account at the outset, and not at the end as happened previously.

The consultation on the reply of the ESOs to a standardisation request/mandate, and the work programme the ESOs have to submit once a mandate accepted, is not so clear. The Vademecum says in note 22 that this access is through the national delegation. However, as recognised by the Vademecum in the paragraphs before, societal stakeholders are not always able to participate in standardisation at the national level. Hence the recognition of Annex III Organisations in conveying the collective view of these weaker stakeholders on a given topic.

- ANEC proposes note 22 be deleted.

Section 7.2 Means for compliance assessment

Will the documents mentioned in section 7.2 (ESOs' reports, checklists, etc.) be publicly available? We think it relevant for Member States and stakeholders to have access to documentation about the compliance of standards with legal requirements.

⁵ <http://goo.gl/GAXqrR>

- ANEC proposes the documents mentioned in section 7.2 be made publicly available.

Figure 1 establishing the standardisation needs and the overall process

As a standardisation request/mandate is an Implementing Act by the Commission after consultation of the Committee of Standards, we believe it important to mention this step of the procedure in the flow-chart of Figure 1.

- ANEC proposes the consultation and opinion of the Committee of Standards be mentioned in the flow-chart of Figure 1.