POSITION PAPER


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1 Purpose

This paper provides ANEC comments on the conclusions and 13 recommendations of the EY Report of the Independent Review of the European Standardisation System (ESS)\(^1\), undertaken in response to Action 29 of the Communication COM(2011) 311. Note that our comments are reserved for those conclusions or recommendation that are seen as having direct relevance to ANEC; its role as an Annex III Organisation; or its mission in promoting the increased protection & welfare of consumers, through the development of standards, or the elaboration of legislation and public policy that affects the use of standards or looks to standards for their implementation.

Most comments refer to the participation of ANEC in CEN-CENELEC. This is for two reasons. The first is that almost all work of direct relevance to consumer welfare and protection is done in CEN-CENELEC (although this may change with the Digital Single Market). The second is that ANEC is an ordinary full member of ETSI. Hence many issues that arise from ANEC’s observership in CEN-CENELEC as a Partner Organisation do not apply to ETSI. Nevertheless, we believe it would also be beneficial for ETSI in fulfilling the expectations of Regulation (EU) 1025/2012 to create a separate category of membership for Annex III Organisations (see our comments on “Separate Category for the Annex III Organisations” under Recommendation 9).

2 Comments on the EY Recommendations

Recommendation 1: Improve the speed of standards development through an alternative scheme for specific standardisation needs (High effort)

ANEC believes the three ESOs already have a sufficient range of deliverables to meet market needs, from the European Standard (EN) downwards (in terms of the breadth of consensus represented and the rules on implementation at national level). We also note that CEN-CENELEC have already taken steps in the past 12 months to shorten development time of an EN further (e.g. by reducing the Enquiry stage to 3 months and omitting the Formal Vote by default), even though the typical development time for an EN published by CEN-CENELEC in 2014 appears to have been between 2.34 and 2.99 years (i.e. within the three-year timeframe introduced in 2002).

The omission of the Formal Vote already removes one of the few steps available to CEN-CENELEC Partner Organisations in influencing decisions on an EN, leaving the TC decision on releasing the draft standard (prEN) to Enquiry\(^2\) as the last decision which the Partner Organisations can hope to influence.

\(^1\) Version dated 14 April 2015
\(^2\) Although the decision to omit the Formal Vote in CEN still requires a Technical Committee decision (in which Partner Organisations should be part of the supporting consensus).
Hence ANEC would be opposed to proposals to reduce development time of standards further still, noting that the timeliness of development (e.g. the time needed to meet the expectations of interested parties on the content of an EN, and bearing in mind the intended use of an EN – such as supporting legislation) is more important than absolute speed. We would also oppose proposals that would allow the Commission to recognise deliverables other than the EN in supporting legislative or public policy needs, except where such recognition is agreed unanimously among the interested parties and is reflected in the related standardisation request.

**Recommendation 8: Develop an integrated information system to monitor the standards development process (High effort)**

ANEC would welcome proposals that could reduce the burden of reporting that arises directly and indirectly from Regulation (EC) 1025/2012 and also leverage the most value from the reporting submitted by the various bodies. Nevertheless, the benefits of such a system must be balanced against its costs and feasibility.

Separately, we have concerns at some of the KPIs identified in Table 5 but address these separately below.

**Recommendation 9: Ensure involvement and participation of Annex III organisations in standardisation (High effort)**

Given this is the most important recommendation from the perspective of ANEC, we present our comments as follows:

**Annex III Organisations – complementing the national delegation principle**

Achieving the effective participation of Annex III Organisations is key to their ability to complement the national delegation principle and ensure that European Standards are as robust as possible and meet as many expectations as possible.

ANEC recognises the national delegation principle is a necessary component of the standards development process (certainly in CEN-CENELEC) but it is insufficient as most national viewpoints cannot reflect the opinions of societal stakeholders – such as consumers – as the technical expertise among these stakeholders at the national level is often inadequate or non-existent. It is a fact underpinned by several studies over the past decade, including the “Access to Standardisation Study” and EXPRESS report, both prepared for the European Commission. As the case study on Annex III Organisations quotes from the EXPRESS report, "participation of these stakeholders at national level is weak in many countries for several reasons. In order to address this weakness –and so guarantee the relevance of the European standards process built on national delegations- it has been recognised since 1990s that it is essential to ensure participation of these stakeholders directly at European level".

**Separate Category for the Annex III Organisations**

ANEC recognises that CEN-CENELEC (and ETSI) are private associations. Accordingly, we understand and respect that the members of the ESOs are free to decide on the governance structures of the ESOs. However, the decision of CEN-CENELEC through
their Guide 25\textsuperscript{3} to offer the status of “Partner Organisation” to Annex III Organisations and pan-European industry associations masks the visibility and understanding of the Annex III Organisations among the actors in the system, and the special role they are meant to fulfil in representation of the weaker stakeholders at national level.

We appreciate the Technical Boards of CEN and CENELEC have granted ANEC, ECOS, ETUC and SBS alone the right to participate in any of the technical bodies of the two ESOs without the need for a further decision. However, we believe the visibility and effectiveness of Annex III Organisations is hindered by not having a separate category of partnership.

In the case of ETSI, the creation of a category of membership (or partnership) for the Annex III Organisations would also be welcome, given it makes no sense for these international associations (under Belgian law) to be considered a Belgian member, and to be part of the Belgian delegation to ETSI General Assembly meetings, simply because they are incorporated in Belgium. Similarly, a separate category should offer the Annex III Organisations the right to comment directly to ETSI on draft ENs, rather than have to submit comments through the Belgian NSO.

Hence ANEC asks the three ESOs to create a separate category of membership (or partnership) for Annex III Organisations in order to support their specific roles (and to facilitate the granting of additional rights).

More effective influence – one step forward, one step back

The CEN-CENELEC Internal Regulations Part 2 have been revised since the adoption of Regulation (EU) 1025/2012, inter alia, to require Partner Organisations (including Annex III Organisations) to be part of the consensus behind decisions of a Technical Committee at key stages in the development, review or withdrawal of an EN.

But, as we comment under Recommendation 1, the chance to influence the decision on whether a draft standard has enough support to be sent to Formal Vote has already been compromised by making Formal Vote optional by default (effectively combining it with the Enquiry stage for most draft standards).

No voice for weaker stakeholders on the acceptability of an EN

Furthermore, despite their roles in representing those stakeholders underrepresented at the national level, the Annex III Organisations still have no formal say in parallel to the weighted vote of national members during the Enquiry stage (or Formal Vote).

Although ANEC understands that the weighted vote does not map well to the Annex III Organisations, and that the vote is derived from the responsibilities incumbent on the CEN or CENELEC national member in implementing the EN as a national standard (including withdrawal of pre-existing national standards in conflict), it nevertheless is surprising that the European associations recognised by Regulation (EU) 1025/2012

\textsuperscript{3} “The concept of Partnership with European Organisations and other stakeholders”

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as representing weaker stakeholders at the national level are not allowed a view on the acceptability of a draft standard as a European standard.

Hence ANEC asks that CEN-CENELEC introduce a “formal right of opinion” for the Annex III Organisations during the adoption phase of a draft standard, through which a negative opinion from an Annex III Organisation would have a consequence while not interfering with the result of the weighted vote of members and primacy of the national delegation principle (e.g. the consequence could be that, if the result of the weighted vote of members leads to adoption of the EN, the parent TC is asked to review the reasons for the negative opinion of the Annex III Organisation and to propose an action if it is in agreement).

The right of appeal as an essential safety valve

CEN Associate members (and CENELEC Cooperating Partners by inference) used to have an unrestricted right of appeal against the ratification of an adopted EN (or other decision taken in CEN-CENELEC). However, the Technical Boards of CEN and CENELEC amended the Internal Regulations Part 2 in 2014 to limit the right of appeal of Partner Organisations (including the Annex III Organisations) only to standards where the Partner Organisation has participated in the development of the standard.

Although ANEC recognises the wish of CEN-CENELEC to have “no surprises” at the end of the standards development process, Annex III Organisations should have the ability to appeal, especially if an issue critical to health & safety appears only at the “eleventh hour”.

As noted by EY, the right to appeal was only very rarely used (and never abused) by Annex III Organisations that were CEN Associates between 1992 and 2014. Moreover, a CEN or CENELEC national member may appeal even if it was not involved in the standardisation work. This essential safety valve should be extended to the European associations representing weaker stakeholders.

It has been argued by some in CEN-CENELEC that the Technical Boards would always act if an Annex III Organisation raised a fundamental concern about a draft standard. If this is the case, why not simply grant the Annex III Organisations an unrestricted right of appeal? Moreover, only an appeal can stop ratification and the implementation of a (potentially defective) European Standard as a national standard in 33 countries.

Given this, ANEC asks CEN-CENELEC to grant an unrestricted right of appeal to the Annex III Organisations against the ratification of a European Standard.

Strengthening partnerships between the European and national levels

Although ANEC stresses that the fundamental weakness of the underrepresented stakeholders at national level is almost impossible to address – at least in the case of consumer representation – as it is the lack of technical expertise in most countries that is the problem, we believe further measures need to be taken to strengthen the links with the national communities represented by the Annex III Organisations.
We realise that CEN-CENELEC are working to place a “contact point” in each of the national standards bodies and national (electrotechnical) committees to facilitate the operational relationships with the Annex III Organisations and their constituents. We urge them to continue to do this (and to perhaps to make the nomination of such a national contact a membership criterion in CEN-CENELEC Guide 204). Of course, the contact would also serve as the contact in the ETSI NSO.

Furthermore, we invite the Commission to consider an action to facilitate workshops of the interested parties (government, national standardisation organisations and the Annex III constituencies) that could lead to better understanding and commitment at the national level.

**High effort?**

We note that EY believe the implementation of Recommendation 9 to be “high effort”.

We believe most of the actions here are quite straightforward to implement (and do not require much revision of the rules of the ESOs). But we do recognise that there will be much political resistance from the national standardisation organisations in the implementation of the recommendation, as the recommendation is undoubtedly seen as a “Trojan Horse” that could lead pan-European industry associations to seek similar rights as Annex III Organisations (so “destroying the national delegation principle”).

However, such sensationalism can be refuted by stressing the special provisions of Regulation (EU) 1025/2012 towards only those stakeholders underrepresented at the national level. For this reason, it is again regretted that none of three ESOs has taken steps until now to create a separate category of membership (or partnership) for the Annex III Organisations.

The acid test will be the political investment the EC chooses to make (or not) in the implementation of the recommendation (or elements thereof). There is no doubt that the Annex III Organisations are unable to achieve such reforms autonomously.

**Recommendation 11: Strengthen guidelines to improve consistency in working methods and processes in the ESS (Medium effort)**

ANEC supports all efforts that can be taken to ensure as much alignment as possible among the ESOs on their working practices, especially the rules for development for the same deliverable (e.g. the EN), and cooperation on common standards work (e.g. do the rules of CEN or CENELEC or ETSI take precedence where differences exist?).

**Recommendation 12: Strengthen the link between standardisation activities at international level and EU policy and legislative needs, and identify priority areas of work at international level (Medium effort)**

Against the background of globalisation, we believe the ESS partners, but especially the EC/EFTA, ESOs and Annex III Organisations, need to review the lead of ISO-IEC

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4 “Guide on membership criteria of CEN and CENELEC”

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in the development (or revision) of European Standards that are (or were) the subject of a mandate or standardisation request.

We were especially alarmed to note that the latest Guidelines to the ISO-CEN Vienna Agreement⁵ (which are in effect rules for implementation of the Vienna Agreement), indicate that revision of European Standards identical to ISO Standards should take place under ISO lead, even if the original EN was developed in CEN under EC mandate.

For many reasons, the voice of the weaker stakeholders represented by Annex III Organisations in the ESS is absent in many international (ISO-IEC) committees.

Hence we believe that work that was (or is) subject to a standardisation request (or mandate) should be done in Europe unless there is consensus among all European stakeholders that the work be led at the international level.

**Recommendation 13:** Develop partnerships with SDOs and other standardisation related projects (e.g. ETP) outside the ESS for a coordinated approach to the identification of the needs and standards development (Medium effort)

ANEC cautions against any initiatives that could undermine the ESS as the exclusive provider of standards providing a presumption of conformity to European legislation. This may not be the intent of this recommendation, but it is well-known that the US would be delighted if the TTIP negotiations lead to the standards of US SDOs providing a presumption of conformity. Given that the European and US standardisation models are asymmetric – Europe aims to offer an inclusive system; the US does not – it cannot be expected that the needs of societal stakeholders will be taken into account in a standard of a US SDO (and possibly not all the needs of European industry).

All other standards developers around the world are free to propose their standards for adoption as European standards – using the usual procedures of CEN, CENELEC & ETSI – and hence there are no technical barriers to be overcome.

Similarly, all SDOs are free to propose their standards for adoption as International Standards to ISO & IEC.

ANEC understands there have been discussions between the ESOs and ANSI on the development of bilateral standards (e.g. female body armour; synthetic biology). It is too early for us to take a position as too few details are known. However, we would want any resulting standards published in Europe to follow the due processes of the European Standardisation System.

### 4 Comments on the Key Performance Indicators

Table 5 in the EY Report proposes the introduction of 17 Key Performance Indicators (KPIs).

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⁵ p9, Vienna Agreement Guidelines, 6th edition (January 2014), [http://goo.gl/QmuEx0](http://goo.gl/QmuEx0)
ANEC is concerned at KPI 12, which aims to measure the share of experts in TCs/WGs being appointed by societal stakeholders/representing societal interests, and KPI 13, which aims to measure the share of experts in mirror committees being appointed by societal stakeholders/representing societal interests.

The **absolute** share is unimportant. It is the participation of the societal stakeholders in bodies that are of relevance to one or more of them (if we are thinking of the Annex III Organisations in the case of KPI 12) that is important. For instance, it may be that there is standards work of interest in a TC/WG, but the Annex III Organisation lacks the human (expert) or financial resources to participate. A similar comment can be made about KPI 14 which aims to measure the share of TCs with representation of Annex III Organisations.

We would be prepared to work with the EC and ESOs to refine these KPIs if the EC decides to implement them or others like them.
About ANEC

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 is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.

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