

ANEC position on service standardisation

ANEC considers that the services sector is too important in terms of the safety, health and economic security of consumers to be left solely to voluntary standardisation, and calls on the European Commission to introduce a horizontal legislative framework covering the safety, quality and liability of services. 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 standardisation.

A study commissioned by ANEC supports the call for such a framework, and shows that whilst the recent 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, the study stresses the need for a 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.

INTRODUCTION

Consumer services are offered across an increasingly wide range of areas, such as recreational services, repairs and postal services. Many of these services are offered to consumers during their stays in other Member States and, after the adoption of the Services Directive (2006/123/EC) in 2006, a growing number will also be provided cross-border. A study commissioned by ANEC 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 shows that the recent Services Directive overlooks safety matters whilst explicitly encouraging¹ 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 inadequate and calls on the European Commission to introduce a horizontal legislative framework covering the safety, quality and liability of services, which is to be underpinned by

¹ 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".

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. This position also gives an outline of the core consumer elements which should be taken into account in the drafting of any consumer-relevant service standards in the future.

BACKGROUND OF THE ANEC STUDY²

Service standardisation is a relatively new area, and considering that there is no horizontal legal framework to guide the work, contrary to the product field (the so-called New Approach³), the objective of the research for ANEC was to systematically analyse existing service standards in their broader, European regulatory context to gain an understanding of the existing regulatory frame and possible gaps. To facilitate future work on service standards, the study defines 'best practice' and identifies core consumer elements in service standards. The study then analyses existing service standards at the national (UK, France, Germany and Finland), and European level to evaluate whether or not the identified consumer elements have been taken into account in these standards. In doing so, the study also draws some parallels with international (ISO) work. Finally, using the core elements as a yardstick, the study goes on to set baseline requirements for service standards. The study also gives recommendations on what a future policy on service standardisation ought to entail.

The project was carried out by Prof. Dr. Hans-W. Micklitz (University of Bamberg, Germany) between July 2006 and April 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. 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.

Following on from the above, ANEC supports the study recommendation that a 'quasi-New Approach' should be applied to 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 European Standards Bodies. ANEC thus calls on the Commission to develop 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. ANEC strongly supports the study recommendation that the Commission

² The recommendations contained in the study are those of the consultant. This paper 'ANEC position on services standardisation' draws from the study, but sets out ANEC's views which may differ in some respects from those in the commissioned research report.

³ New Approach to technical harmonisation and standards

should also elaborate a framework directive with more detailed mandatory requirements to govern the quality of services. Only once such an overarching legislative framework is in place should further service standardisation be promoted to set the detailed specifications.

Furthermore, ANEC considers that the above-mentioned approach should make use of the regulatory model used in the eco-design of energy-using products (EuP) field⁴, which allows for flexibility, increased transparency, and stakeholder involvement whilst setting an overarching, binding regulatory framework. In contrast to the general New Approach scheme, the EuP framework directive provides that implementing measures, to be prepared by regulatory committees, should specify the detailed requirements for various energy-using product groups. Thus, standards complement this system by setting the technical specifications and test measures. An important part of this EuP approach is the setting up of a consultative stakeholder forum, which allows stakeholders to provide their contribution on the implementation of the Directive. A similar approach should be adopted in the services field.

Finally, in order for any regulatory measures or standards to have a real practical impact, the suggested regulatory framework 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.

STRONGER ROLE FOR CONSUMER ORGANISATIONS

ANEC strongly supports the study recommendation that, 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. As noted in the study, this is in particular the case considering that the Services Directive⁵ 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 ANEC⁶, 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.

⁴ Directive 2005/32/EC establishing a framework for the setting of eco-design requirements for energy-using products

⁵ Article 26(1) of the Services Directive

⁶ See for example 'ANEC proposals for improving stakeholder participation in CEN and CENELEC', <http://www.anec.org/attachments/ANEC-GA-2006-G-004.pdf>

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.

LINK BETWEEN SERVICE STANDARDS AND CONTRACT LAW

The study highlights that one of the differences between service and product standards is that the former affect the legal-contractual environment. The more standardisation is overstepping the 'regulation - technical specification' boundary, as is often the case with service standards, the more necessary it is to indicate the legal environment in which the standards exist. The study argues that the Commission has given European Standards Bodies a role in the shaping of consumer-related service contracts and that, from this perspective, service standardisation could 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 thus lies with the European institutions and, in particular, the European Commission, rather than the Standards Bodies.

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. The study shows that there is currently little connection between service regulation and service standards. ANEC thus also supports the study recommendation that increased cooperation should take place between ANEC and BEUC⁷, 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. As noted in the study, the regulatory environment consists not only of European laws as such, but also of international private law rules⁸ and international conventions (e.g. in the field of air transport).

HORIZONTAL SERVICE STANDARDISATION

As service sectors differ greatly in nature, ANEC does not consider it to be feasible to develop horizontal service standards to cover all aspects of service provision across different service sectors. Although the benefit of such an approach could be a decrease in the number of inconsistencies between vertical standards, it is likely that such a horizontal service standard would need to be drafted so widely that it would risk losing all meaning. ANEC therefore considers that in order to avoid inconsistencies of approach between different vertical service standards, certain core elements could be drawn upon in the development of these vertical standards. As an example, the forthcoming ISO/IEC Guide 76 'Development of

⁷ BEUC, the European Consumers' Organisation, www.beuc.eu

⁸ E.g. the Rome Convention on cross-border contractual disputes (19 June 1980)

service standards – Recommendations for addressing consumer issues’ could be used, along with the core elements enumerated below, as a ‘consumer blueprint’ or checklist for service standards.

CORE CONSUMER ELEMENTS IN SERVICE STANDARDS

In order for consumers to benefit from service standards, it is necessary to define the essential, or core, elements which are of considerable importance to consumers in the provision of any service. Based largely on the analysis found in the study⁹, ANEC notes that the following six elements should be considered and addressed whenever a service standard is developed.

- 1. Core competences¹⁰:** From a consumer perspective it is of utmost importance whether or not the service is executed by someone with the requisite skills, training, education, and knowledge. As found by the study, unfortunately information on the applicable rules remains scarce. Although Directive 2005/36/EC on Professional Qualifications leaves it to Member States to decide over the education of professions, ANEC recommends that Standards Bodies make more use of the leeway left to them, all the while taking the above Directive into consideration.
- 2. Equipment and premises:** This element should be taken to include not only safety, security and hygiene issues, but also the principle of accessibility. The study’s review process reveals that most regulations and standards deal with premises and equipment in some form or another, however, no links between the law and the standards were found and no systematic approach was detected. ANEC underlines that, from the point of view of consumer safety, knowledge about the proper and safe use of any equipment is essential. Thus this element is strongly linked with the previous element on core competences.
- 3. 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, as well as the form of contract conclusion. The study shows that all rules, whether mandatory or non-mandatory, put much emphasis on the pre-contractual stage, in particular on information requirements and transparency. However, the study notes that European regulations give more detail on pre-contractual requirements, whereas standards only appear to contain pre-contractual information requirements if the standard relates to contract-making. ANEC underlines that information requirements should be systematically addressed in service standards, and should take into account the requirements set in the Services Directive¹¹. Information provision should in particular

⁹ The study goes on to set minimum, or baseline, requirements for all six core elements

¹⁰ It should be noted that this core element is entitled ‘Education & skills’ in the study commissioned by ANEC.

¹¹ Article 22 of the Directive

take into account any accessibility principles. Finally, this element should include rules on marketing and advertising.

- 4. 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. Although the content of the contract could be considered as one of the most important elements from the consumer viewpoint, the study shows that regulations on services are patchy in that these aspects are not fully dealt with. The study observes that EU regulations are deficient when it comes to consumer rights in case of improper service or liability for loss, but that cancellation rights and rights of withdrawal are relatively well developed in legislation. Further, the study notes that the technical standards examined appear to have focused only on quality management and quality requirements. ANEC, however, questions to what extent quality requirements have been achieved in existing service standards.
- 5. Post-contractual stage:** This element includes insolvency rules, after-sales services, dispute resolution and complaints handling, and collective redress. Attention should also be paid to any rights to a 'cooling off' period. Whilst after-sales services are largely ignored in both regulations and standards, insolvency protection is quite prominent in EU regulations, according to the study results. Likewise, complaints handling and dispute settlement show up in most EU regulations and standards, although these do not appear to be linked to more fully developed concepts found in Commission Recommendations 98/257/EC¹² and 2001/310/EC¹³. Interestingly, standards put more emphasis on in-house dispute resolution mechanisms, contrary to the official Community policy to foster out-of-court dispute settlement. It is suggested that ISO work¹⁴ on customer satisfaction standards is taken into consideration in the work at the European level.
- 6. Monitoring and inspection:** The study observes that European regulations do not appear to scrutinise monitoring and inspection duties, and that work at the ISO level¹⁵ goes a long way in setting such requirements in service standards. The concept of best practice includes the need to organise a constant learning process through the evaluation of customer satisfaction and although many standards address this issue, clear-cut rules are still missing, according to the study. ANEC thus calls for monitoring and inspection provisions to be more systematically included in future standards.

¹² Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes

¹³ Recommendation on the principles for out-of-court bodies involved in consensual resolution of consumer disputes

¹⁴ ISO suite of standards on customer satisfaction (draft ISO 10001 on codes of conduct, ISO 10002:2004 on complaints handling, and draft ISO 10003 on external dispute resolution)

¹⁵ See footnote 14

NEED FOR MORE RESEARCH

As noted, service standardisation is a relatively new area and the results of the study show a clear need for further research in the services field. With a view to this, ANEC supports the study recommendation calling for Commission funding for a pilot project on the elaboration of a consumer-focused service standard, with consumer representatives taking the lead in the project.

ANEC in brief

ANEC is the European consumer voice in standardisation, representing and defending consumer interests in the process of standardisation and certification, also 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. We represent consumer organisations from the European Union Member States and EFTA countries. The European Commission and EFTA fund ANEC, while national consumer organisations contribute in kind. The ANEC Secretariat is based in Brussels.

The full study is available at:

<http://www.anec.eu/attachments/ANEC-R&T-2006-SERV-004final.pdf>

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