



**ANEC response  
to the public consultation of the  
European Commission  
on  
Standardisation**

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## **ANEC response to the public consultation on standardisation**

### **A. Avoidance of the creation of new technical barriers to trade for products and services in the internal market**

1. Do you think service standards (including process standards) and alternative standardisation documents should be included in the scope of Directive 98/34/EC or its successor?

ANEC supported the plans of the Commission to revise Directive 98/34 in its response to a public consultation held in 2004. *Inter alia*, we agreed to the broadening of the scope of the Directive in order to include services. This remains our position.

Bearing in mind the ISO definition of products includes services and noting the mandates already given to the ESOs in the field of services, this broadening of scope will not make a fundamental difference in practice. It will simply make explicit what has been done anyway. In principle, all kinds of standards could be covered by the Directive. This is not so important from the perspective of trade barriers but with respect to the adoption and follow-up of mandates.

At the same time (and other occasions), we have expressed reservations about the use of "alternative standardisation documents" or "new deliverables" in the context of public policy, bearing in mind that these documents need not reflect the views of all interested parties and so may prejudice the consumer interest from the outset. In addition, the real benefit of these 'narrower consensus' deliverables is marginal in the support of policy as the preparation of a sound specification will normally take some time and this can be cut only by a small degree. It would be more sensible to continue to optimise the process for the development of traditional standards.

However, we do not want to exclude entirely the possibility to make use of deliverables other than traditional standards in a legal or public policy context. But the Commission would need to ensure any alternative deliverable in this context is prepared exceptionally and follows strict rules (not just some vague principles), ensuring adequate involvement of public interest advocates and balanced decision-making.

2. Are you aware of specific cases where national service standards and alternative standardisation documents have caused technical barriers to trade?

No. If indeed there are such cases, the important question is whether the barrier to trade was justified on the grounds of social security, safety, public health or the environment.

### **B. Adaptation of the European standardisation system to the rapid evolution of technologies**

3. For areas other than Information and Communication Technology (ICT), should it be possible to refer to documents developed by fora and consortia in legislation and public policies? If it should, how should it be implemented?

The clear answer is *no*. Following our answer to Question 1. only documents prepared by institutions with a democratic legitimisation, and subject to strict rules ensuring adequate involvement of public interest advocates and balanced decision-making, should be eligible to be referenced in legislation and public policies. Most fora and consortia do not meet this by definition.

However, ANEC does recognise that some non-formal private standardisation bodies may offer a genuine alternative. Often, these are institutions of a multi-stakeholder type. The International Social and Environmental Accreditation and Labelling Alliance (ISEAL) is an umbrella of such organisations including the Fairtrade Labelling Organisations (FLO) International, Forest Stewardship Council (FSC) Social Accountability International (SAI) and several others. ISEAL has even published "Good Practices for Setting Social and Environmental Standards". Where a standards development organisation provides evidence to the European Commission and 98/34 Committee that it follows strict rules (to be incorporated in the revised 98/34 Directive), ensuring appropriate involvement of public interest advocates and balanced decision-making, then the possibility may exist for its documents to be used in a public policy context. Such organisations could even be mandated under certain conditions.

4. How could ESOs and NSOs be encouraged to accelerate their standards development process? Should for example the Community financing for standardisation be subject to conditions in terms of speed of delivery whilst maintaining the openness of the process?

Improving the speed of delivery of traditional European Standards has been a matter of priority for the ESOs for much of the past decade, especially CEN and CENELEC. Indeed, the improvement has been such – with CEN and CENELEC now routinely delivering ENs in fewer than 36 months – that speed of delivery should no longer be considered a real issue, particularly when one recalls the timeframe for introducing European legislation. ANEC would oppose a further acceleration of the standardisation process that would put at risk the present platform of consensus on which ENs are developed, no matter how imperfect we may believe that platform to be in reflecting the needs of all interested parties. Those sectors that require quicker solutions should be asked to use alternative deliverables.

However, we believe much can be done to improve the relevance of standards and their robustness. A key to a more *efficient* standardisation system lies in a more demanding preparation of the standardisation work. By the time work starts, a first draft of the standard should be available, perhaps prepared by a consultancy or test house. The development of the first draft should be preceded by a feasibility study that objectively addresses the relevance of the proposed standard or series of standards (this may need to be done outside the ESO and its membership and be decoupled from the proposal to develop the standard). The standardisation process can then focus on fine-tuning the draft. This can be done quite quickly, provided the participants are in broad agreement about the concept. A first consensus on the envisaged outcome should be established at the outset of the process. Further help from consultancies or test houses may also be beneficial.

Of course, all of the above requires additional funds. The Commission should be prepared to make them available.

***(editorial note: there is no Question 5).***

### **C. Adaptation of the European standardisation system to new markets and societal challenges**

6. Should the WTO principles of transparency, openness, impartiality, consensus, efficiency, relevance and consistency be integrated in the legal framework of European standardisation (especially in EU Directive 98/34/EC or its successor)? How should this be implemented?

ANEC welcomes and supports the Commission's intention to specify, in Directive 98/34, the principles that ESOs (and potentially other standards developers) must observe. The Commission cites WTO principles (transparency, openness, impartiality, consensus, efficiency, relevance and consistency). However, these principles alone are not sufficient to ensure that the interests of consumers, other societal interests and minority positions in standardisation are adequately covered.

A vital point is addition of the principle of 'balanced representation and decision making'. Incorporation of *all* stakeholder positions in a balanced manner is of utmost importance whenever the public interest is concerned, especially when standardisation mandates are issued. Neither the WTO principles, nor current standardisation rules, implement this principle.

Moreover, some vague concepts need to be further detailed in order to take on a real meaning. For instance, a popular term in standardisation – 'consensus' and its implication of the absence of 'sustained opposition' – is not translated into practical rules within the ESOs (e.g. How can sustained opposition be expressed? Who is entitled to declare fundamental disagreement? Who decides whether the criteria defining consensus have been achieved?). Our sustained opposition towards the adoption of some European standards has not prevented the ESO in question to claim they were prepared in a consensual manner (more details can be found in our position paper: *proposals for improving public interest stakeholder participation in CEN and CENELEC* from 2006<sup>1</sup>).

Finally, the ESOs and their NSB/NC members (and potentially other recognised standards developers) should have to provide evidence they have implemented the principles outlined above. The opinion of stakeholders should be heard in this respect. A recognition of any standardisation body should be linked to its (continued) adherence to the principles and rules mentioned. Regular reviews of the standardisation work and procedures should take place at the level of the 98/34 Committee which should be opened permanently to representatives of the European social interest, a request we have made on many occasions (including the enlarged 98/34 meeting in December 2009). Access to the 98/34 Committee is of special importance with respect to the adoption and implementation of standardisation mandates (e.g. safeguard procedures).

7. How could the participation of consumer organisations, environmental NGOs, trade unions and social partners, and SMEs be best promoted? What should be the role of public authorities (European Commission and Member States) in supporting such a participation in a transparent, open, impartial, consensual, efficient, relevant and consistent European standardisation system?

The Access to Standardisation study of March 2009, prepared for DG ENTR, confirms that consumer and environmental interests are underrepresented in the mirror committees of the NSBs/NCs that form the national delegations to CEN

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<sup>1</sup> See <http://tinyurl.com/3abapto>

and CENELEC. Consumers are seen<sup>2</sup> - even by themselves<sup>3</sup> - as having both a low commitment to standardisation and insufficient knowledge. As the report goes on to state, consumer interests - among others - are "only marginally represented in many countries"<sup>4</sup>. Indeed, such reasons lay behind the creation of ANEC in 1995.

The market does not **automatically** provide for the representation of the public interest in the standards development process. With **few** notable exceptions (e.g. Austria, Denmark, Germany and the United Kingdom), national consumer expertise in standardisation is often fragmented across many bodies or simply does not exist. Hence it is vital that the 'democratic deficit' at European level is bridged through ANEC receiving financial support in order to ensure consumer participation and in order to seek European standards that are to the benefit of everyone in society. As the EXPRESS panel noted in its report<sup>5</sup>:

*For CEN and CENELEC, the national delegation principle is a cornerstone of the success of the ESS process and should not be changed (. . .). But the difficulties for some key stakeholders (SME, consumer, environmental and trade union interests) to participate in the ESS through national delegations were stressed in the EIM study. 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 the 1990s that it is essential to ensure participation of these stakeholders directly at European level. The roles of public authorities and standards bodies in seeking to improve participation at national level have been noted in various Council Conclusions, most recently those of September 2008, and there is an important role too for the European organizations established to represent these stakeholders. Considerable efforts have been made by these organisations to improve stakeholder engagement at national level, with limited success. This indicates the need for additional and improved efforts at national level. The Panel believes that there is a potential for improvement by establishing twinning programmes and closer cooperation among NSBs (e.g. peer review system and exchange of best practice experience) and by increased efforts of the European organisations to build-up and improve collaboration with national structures. However, bearing in mind the very limited progress made until now in improving the engagement of these stakeholders at national level, there will be need for European level financial and political support to continue in the period to 2020.*

Noting the need for European associations - such as ANEC - in guaranteeing the relevance of a European standardisation process built on national delegations, as well as in undertaking the capacity-building needed at the national level, we call for the revised 98/34 Directive to include a requirement for the EU to make adequate funding available to those European-level associations representing consumers, environmental interests, trade unions and SMEs in the European Standardisation System (ESS).

Moreover, there should be an obligation for Member States to establish a legal foundation for such funding. At present, only Austria has incorporated a legal obligation to support a consumer representation in standardisation. This is done through a Product Safety Act implementing the General Product Safety Directive.

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<sup>2</sup> Access to Standardisation study, EIM, p8, 2<sup>nd</sup> paragraph

<sup>3</sup> Ibid p8, 3<sup>rd</sup> paragraph

<sup>4</sup> Ibid p10, 2<sup>nd</sup> paragraph

<sup>5</sup> Report of the Expert Panel for the Review of the European Standardisation System, p28

In the development of the European standards meant to support legislation or broader public policies, ANEC has long been critical of the imbalance between the business interest and public interest, both in the European technical bodies and national mirror committees. Despite its importance as one of the pillars of the public interest in the ESS, ANEC is only an observer in the technical (and political) bodies of CEN and CENELEC. In ETSI, ANEC is classified as an ordinary Belgian full member with a single vote (compared with the many votes of each multinational industry member of ETSI). As such, ETSI does not accept the notion of *consumer*, but classifies consumers as *users* on the same footing as small businesses and others.

In developing standards where the public interest is key, ANEC believes the ESOs must look towards the model used to develop the ISO 26000 standard on Social Responsibility. This work took a stakeholder-based approach.

Six stakeholder categories were defined: industry, consumers, government, labour, NGO, SSRO (Service, Support, Research and Others). An NSB could nominate only one person to the Working Group in each category. All expert members of the Working Group acted in a personal capacity and could express their (stakeholder) perspectives. The stakeholders used caucuses which held meetings alongside meetings of the Working Group to develop joint positions on certain key issues (e.g. whether a working document should progress to the next level). It should be noted that the work returned to the traditional standardisation procedures once the document left working-draft level and reached later stages (CD, DIS). From this point, national positions were forwarded to the Working Group, with experts at the international level continuing to act in a personal capacity. However, positions dissenting from the national consensus could also be submitted.

Several operational procedures have been developed in support of this ISO process. Due to the lack of resources of some stakeholders, these procedures have not yet led to the theoretical distribution of one-sixth of the seats for each stakeholder category in the Working Group, but there is broad agreement they constitute a significant improvement compared with the traditional process of standards development in ISO. The lessons learned from the development of the ISO 26000 standard are being reviewed by a 'Process Evaluation Group' under the ISO Technical Management Board.

ANEC believes the revised 98/34 Directive should use the stakeholder model as an alternative to the usual model of standards development for items that are key to the public interest or where the public interest is especially sensitive. Such a decision could be taken in the modified 98/34 Committee (in which the societal representatives sit as permanent rather than occasional members), prior to the development of a mandate.

7 bis. How could the NSOs (National Standards Organisations) deepen their cooperation, and mutualise their activities? Could the following tasks be shared among several NSOs?

1. Management of the Secretariats of Technical Committees?

2. Notification of new national standardisation projects?

3. Promotion/sales of standards?

4. Other?

We refrain from answering as this aspect is of no immediate relevance to ANEC.

8. Without prejudice to the national delegation principle, how could the European Standards Organisations (ESOs) manage directly, on a case by case basis, some standardisation activities, especially some Technical Committees?

Management of the stakeholder-based model, described above for development of European standards where the public interest is key, could be undertaken by the ESOs directly. This would achieve clear differentiation of these activities from the traditional means of standards development, based on national delegation.

9. What support should the European Commission provide to facilitate the use of European standards as a means to open global markets? What would be the operational means that the Commission should use? (Support experts' participation in international standardisation activities, translation of European standards into extra-community languages?)

We do not see a fundamental role for the Commission, other than facilitating the framework under which market-relevant and demanding European standards are developed, so enabling Europe to set a best practice to be followed in other parts of the world. Noting an increasing number of European standards adopt ISO or IEC standards, additional financial support to enable participation in international standardisation meetings would be welcome to ensure that the European societal voice is heard in the development of the standard.

10. Under which conditions do you think that the European Commission could launch, on a case by case basis, calls for tenders, open to the ESOs and to other organisations, to develop standards supporting EU policies and legislation?

In line with our earlier answers, the essential condition is that the contractor ensures a balanced representation and decision-making, involving all relevant stakeholders, in line with principles and procedures to be detailed in the revised 98/34 Directive.

11. What is, in your view, the most efficient level of participation in the process of standards development: national, European, international?

The most efficient level of participation is the level at which decisions are made. In the case of original European work, it is the European level. However, where a European standard will adopt an ISO or IEC standard, it is the international level (as noted in our answer to Question 9). Only through direct participation does participation become effective.

12. In your opinion, where is the major added value in European standardisation with respect to national standardisation?

A single European standard (EN) becomes the national standard of 31 countries.

#### **D. Cost of standards**

13. What are, in your view, the most serious barriers to the use of standards by enterprises: costs of standards (purchasing price)? Costs of operational implementation? Access to information? Knowledge of existing standards?

This question has to be answered by the enterprises.

14. What could the standards organisations do, in addition to their current practice, to facilitate the access to standards, especially by SMEs?

This question has to be answered by the SMEs.

## **ANEC in brief**

### ***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.*

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