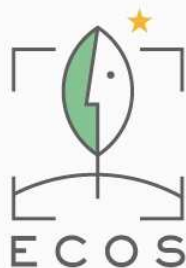


EUROPEAN ENVIRONMENTAL
CITIZENS ORGANISATION
FOR STANDARDISATION



ORGANISATION EUROPÉENNE
ENVIRONNEMENTALE CITOYENNE
POUR LA NORMALISATION

ECOS response to the public consultation of the European Commission on the Review of the European Standardisation System

Brussels, 17.05.2010

Information about the responding organisation

ECOS, the European Environmental Citizens' Organisation for Standardisation, is an association of NGOs active in the field of environmental protection, which together have more than 26 Million individual members. ECOS was created in 2001 as a non-profit association under Belgian law to enhance the voice of the environment within the (European and international) standardisation system. ECOS is supported by the European Commission, EFTA, the European Climate Foundation, the Federal Environmental Protection Agency of Germany, the UK's ministry of the environment and the Esmée Fairbairn Foundation. **ECOS has been an associate member of CEN since 2003 and a co-operating partner of CENELEC since 2005. ECOS is also a "liaison organisation" to (currently four) technical bodies (TCs and PCs) of ISO and IEC.** It does not participate (yet) in the work of ETSI or ITU.

Thanks to the memberships in CEN and CENELEC, ECOS has access to all their technical committees and sends experts to participate in standards development work. Furthermore, ECOS works on improving the framework for public interest stakeholders in standardisation and on enhancing the integration of environmental aspects into standardisation. **It is the only environmental organisation worldwide working to such a degree of detail and on such a wide number of issues on standardisation.**

Since 2007 ECOS also represents the environmental movement in the implementation of the EU's Ecodesign (of Energy using Products-EuP) directive. Its secretariat is based in Brussels and employs five staff. Its current chairperson is Doreen Fedrigo, Policy Unit Coordinator of the European Environmental Bureau. ECOS has 21 Member Organisations: fourteen national and seven European level environmental NGOs. Most of the latter are members of the Brussels "Green 10", including WWF-European Policy Office and Friends of the Earth Europe. For a list of ECOS member organisations as well as more information about ECOS priorities and organisation, please visit the website www.ecostandard.org

Introductory remarks:

- The consultation document mentions the link to the Commission's better regulation agenda. For us the first step in better regulating is to choose the best regulatory option for a given subject in a case by case decision (rather than on a policy field basis). Sometimes this may be a standard, sometimes this may be a legislative solution.
- Since ECOS has a specific status and experience in CEN/ CENELEC (+ ISO/IEC), the following response refers to them and not to ETSI and ITU.

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

ECOS does not support limited-consensus documents (e.g. CWAs) in the area of public policy implementation, which requires full consensus solutions instead.

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

No. ECOS has not been involved yet in the area of service standards.

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?

ECOS would not be opposed to this in principle, BUT such reference should remain the exception and be very well justified. ECOS is concerned about the business model of fora and consortia, which presents less guarantees to abide by the standardisation principles mentioned in question 6 of this consultation). Corporate dominance is usually stronger than in the ESOs, the model to pay considerably for participation.

ECOS would also be concerned if there was a general proliferation of SDOs (Standards Developing Organisations) being referred to in annex 1 of directive 98/34. Already the work going on in the existing ones is difficult to follow for civil society stakeholders, at current resource levels (staff and finances).

However, some very specific non-formal private standardisation bodies may offer a genuine alternative to the ESOs mentioned in directive 98/34. The International Social and Environmental Accreditation and Labelling Alliance (ISEAL, <http://www.isealalliance.org/>) is an umbrella of organisations such as the Fairtrade Labelling Organisations (FLO) International, Forest Stewardship Council (FSC), Social Accountability International (SAI), etc. ISEAL has published “Good Practices for Setting Social and Environmental Standards”, which we consider a model of reference for multi-stakeholder processes, especially in the area of public policy implementation. Where a standards development organisation provides evidence to the European Commission and the 98/34 committee that it follows strict rules (to be incorporated in the revised 98/34 directive), ensuring appropriate involvement of civil society interest representatives 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?

ECOS recognises the sensitive balance between speed and quality, especially as these can often be at odds with each other. The same goes for a wide participation and meaningful enquiry. The other side of fast-track deliverables is their limited consensus. Nonetheless, there is a definite need for a speeding up of specific work items, as has been most evident recently in demands from the Ecodesign of Energy-using Products (“EuP”) Directive implementation. The absence of (appropriate) standards for power consumption measurement of certain appliances slows down the implementation of the EuP-implementing measures and thus seriously mitigates their energy savings potential. ECOS welcomes the ongoing dialogue between Commission and ESOs about better coordination between the legislative and the standardisation process in this area and hopes it will quickly deliver a solution to considerably speed up the elaboration of the much needed standards.

During the last couple of years the ESOs have brought down considerably the average production time for their deliverables. It goes without saying that remaining room for improvement should be used. As innovation has reached the top of the EU agenda, most notably in the Europe 2020 strategy, the pressure for speeded up standardisation processes will only increase.

On the other hand substantial delays are often introduced in whatever kind of procedure from the side of the Commission itself (signing and administration of funding contracts for ESOs and other funded organisations, publication of final standards in OJ, etc.). This is not at all limited to DG ENTR and the administration of the standardisation process and concerns many DGs. It can go as far as having potential beneficiaries refrain from requesting EC funding, because the resources required to apply for and report about it do not actually justify the result yielded. A well-known example in the standardisation area is the translation of standards as funded in the past by the Commission. It can also apply to other sorts of contracts, e.g. for funding of mandates, robustness testing or calls for co-normative research. Thus the biggest acceleration of the standardisation process could probably come from internal improvements in the Commission itself.

Editorial note: There is no question 5 in the EC-document.

ECOS fully shares the analysis of the Commission that “the current diversification of the use of standards requires a broadening of the range of partners involved in the standardisation process, meaning enhanced openness, transparency and balanced representation”. For us this is a prerequisite for such diversification of the use of standards.

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 in its successor)? How should this be implemented?

General

ECOS supports the integration of these principles into the new legal instrument(s) with a strong preference to see them in the core text, not only in the recitals.

Saying that the ESOs and their national members already comply with the principles is not at all an argument against their integration. In that case, why should they not be integrated?

Whatever solution will prevail in the end, the implementation of the principles should be monitored. The question is by whom and at what intervals. Several of these questions have recently been discussed in fora such as the EXPRESS-panel or the steering group of the EC-commissioned study “Access to standardisation”. The latter recommended that the ESOs monitor the participation of stakeholder groups. The discussion is currently going on in CEN/CLC joint BT WG 211 on “Balanced participation”.

Without waiting for modalities to be proposed by this WG, the legislator will have to determine how important this issue is to him and whether a specific monitoring system should be introduced for the implementation of mandates. ECOS would support such a solution recognising the specific nature of this use of standardisation. The ESOs should be required to monitor participation and to act, if gaps are spotted. ESOs and Member States should also be required to provide an implementation report to the Commission, with a clearly stated regularity (e.g. every 3 years) and with the Commission setting out reporting requirements. These reports should then feed into a European Commission report about the efforts undertaken by the ESOs and the results achieved when it reports about implementation of the revised 98/34 directive.

Furthermore EC and MS should check mandated standards against delivery in a more appropriate and impartial way. In the past the system of consultants operating within the

CEN/CLC-system has sometimes showed its limits, given that the consultants are hired by the ESOs themselves. This structure is not exactly a guarantee for impartiality. A small part of the money used to commission European standards should be used to exercise in-house quality control by the principal of the work.

Balanced representation

Also the fact that “balanced representation” is not a principle under the WTO TBT list does not prevent the European legislator to add the issue to his own list, at least in a recital.

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.

Consensus and decision-making

While balanced representation in standardisation work is important, balanced *decision-making* is even more important to guarantee a balanced result that can be the basis for the implementation of European legislation and its national transposition.

The National Standards Bodies vote on final draft standards, because they are deemed to have listened to all stakeholders' views in the elaboration of their national positions. This is called the “national delegation principle”, one of the cornerstones of the current system. Unfortunately, there are stakeholder groups, which are hardly represented at national level. Therefore the national delegation principle (which is acceptable in principle) has its limits and needs corrections where certain interests can systematically not be heard. This is the reason for the creation of European level stakeholder organisations, to help articulate the interests they represent at European level. One of those interests is environmental protection and environmental health as represented by ECOS and its member organisations.

Currently there are two MSs, in which such environmental citizens' organisations contribute systematically to standardisation, namely Germany and Sweden. After June 2010, this figure will drop back to one. (For the reasons, see the next question.)

Therefore ECOS proposes that in environmental matters and as long as there is systematic input from environmental NGOs in less than half of the EU MSs, **a vote be given to ECOS**, provided that it has actively participated in the respective work item at technical level. Final CEN/CLC standards are being voted upon by National Standards Bodies in a weighted vote according to the number of votes of the respective MS in the Council of Ministers. While the biggest Member State has thus 29 votes, a single vote for each European stakeholder organisation representing a specific public interest (currently three) would be more symbolic than revolutionising the system, but would politically be a very good indicator for the real level of support for a given standard.

Also, it should be better defined what “consensus” means in practice and what an organisation/ a stakeholder group can do if it feels its legitimate concerns have not been incorporated into a standard.

Positive vote by default?

Last but not least a flaw exists in the voting system at European and international level which encourages a positive vote by NSBs on final draft standards. Whereas positive votes do not require any comment or justification, negative votes or abstentions do. This clearly fosters a sort of positive vote by default of NSBs not having participated in the work via a national mirror committee, i.e. not having any detailed information about the content of the standard at stake. This makes it even more difficult for weaker stakeholders to have a real influence on the content of standards. Even assuming that e.g. ECOS or NORMAPME could be successful to influence the vote of 2 or 3 out of participating 7 or 8 NSBs, the silent majority will most probably dilute this influence and result in a positive vote anyway, unless the European stakeholder organisation concerned engages in a major information campaign with the NSBs, which is a tool that is not very much appreciated. ECOS has done it successfully once and was accused by some circles (interested in the adoption of the standard) of a “political” campaign, although the arguments put forward by ECOS and other environmental NGOs concerned the technical content of the standard.

Of course a (relatively high) percentage threshold exists that has to be attained in order for the vote to be positive. This is supposed to guarantee a sufficiently high endorsement of standards. In practice however, it only increases the tendency for default positive votes, because non-participating NSBs (in general mostly in smaller and new MSs) will not want to endanger the functioning of the system and risk the rejection of a given standard, even if they do not have any opinion about it.

This is a difficult issue that would have to be tackled at the level of the ESOs' internal regulations. However, the European legislator could request the ESOs to reform their voting system with a view to remedying this flaw.

Openness and access

Without going further into detail ECOS would like to hint at the recent and ongoing discussions in the area of access to standardisation (process and documents), see:

http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/policy-review/access-to-standardisation/index_en.htm

The 2009-study carried out on behalf of the Commission includes an in-depth analysis of remaining barriers and comes up with interesting recommendations most of which are supported by ECOS.

The study commissioned by CEN and CENELEC provides a large number of recommendations focused on access for SMEs, but most of which can also be applied to the public interest stakeholder groups. This has been explicitly recognised by CEN/CENELEC.

Summing up, the biggest part of the analysis has already been undertaken. However, NSBs have an unequal record in actually implementing the well-known best practices. The European legislator should stress what he thinks are minimum benchmarks for each SDO participating in the implementation of legislation by standards. ECOS would suggest that one such benchmark would be a free-of-charge easy-to-use online tool for commenting on standards under development (new documents and reviews of existing ones) on an NSB's entry web page. The Commission and EFTA could include such benchmarks in the guidelines they have agreed upon with the ESOs and they might want to update.

The most contentious issue in the access discussion is the request for free availability of certain standards. On the one hand from a governance point of view it is difficult to envisage to make a citizen/ user / company pay for a document s/he/it needs to be fully informed about how compliance is achieved with a specific piece of legislation. On the other hand the resource implications for the standardisation system are considerable, since such standards may generate between 5 and 20% of NSB-resources (estimated and differing from MS to MS). Since this discussion has received new impetus in some MSs (e.g. FR, NL), the European legislator should seek to strike a balance between those two concerns and try the free-availability-model for a handful of key pieces of legislation. Those cases as well as the situation in the MS concerned should be thoroughly studied and conclusions derived from them on whether this can be taken further or there is no feasible alternative to the purchase of standards.

7. How could the participation of consumer organisations, environmental NGOs, trade unions and social partners, and SMEs be best promoted?

To answer this question, it is helpful to look at the reasons why participation of these stakeholders is insufficient. ECOS can answer that on behalf of environmental NGOs.

a) National level

Each environmental NGO (ENGO) is different, has its own field of activity and takes its own decisions. However, generally there are two main reasons why environmental NGOs hardly participate in standardisation, both linked to each other: **resources and political priorities**. Almost all environmental NGOs have scarce resources and have to choose their activities and priorities carefully. This is even more the case in the current crisis. Standardisation is a

complex process requiring regular input of time and staff and/or even expert resources. Most national level ENGOS cannot afford commissioning experts to technical bodies. They cannot afford their staff to spend the time needed for following standards development either.

Due to the complexity of the process, individual policy officers in national level ENGOS do not have the time to get acquainted with it to get a clear picture of relevance and input required.

Furthermore, often fees have to be paid to participate in a technical body, to provide a comment, etc. This is a very strong disincentive to participate once a public interest stakeholder has made the effort to get informed about a specific work item and knocks on the NSB's door.

In terms of priorities, standardisation often comes at the bottom of the priority list (also for the reasons mentioned above), while policy level work, campaigns, specific projects, education, etc. are privileged. Also standardisation is often not the preferred regulatory option for ENGOS and the process is thus regarded with some suspicion, partly due to corporate dominance. When an unsatisfactory result is expected, ENGOS do not want to give credibility to the result by their participation.

Therefore to motivate ENGOS to participate more, two things are required: more resources and more confidence in the process in terms of procedural guarantees and expectations regarding its results.

Additional resources are a prerequisite for higher involvement, but they are probably not sufficient on their own to generate more participation. ENGOS have to get better acquainted with the work of their respective NSBs. They have to find open doors without barriers and they have to understand the rules and the relevance of standardisation for their policy-level work.

b) European and international level

ECOS is the European level stakeholder organisation representing ENGOS in European level work (so far in CEN and CLC only). Since there is no worldwide equivalent to ECOS and since international standards obviously have an impact in Europe, ECOS also represents its constituency in some work items at international level (with a trend upwards).

While the picture at European level is much better than at national level thanks to ECOS' existence, we are still far from being represented in all technical bodies which are of interest to ENGOS.

A specific increase of activities would be needed at international level, since the tendency for many work items is to move to the international level.

Also, ECOS has a role in the information of national level ENGOS of the relevance and importance of standardisation for their work. ECOS actively tries to generate more participation at national level, which requires time and resources within ECOS, too.

Summing up, to ensure better representation at European and at international level as well as to generate more national level participation, ECOS requires additional resources, too

Therefore it is of importance to bring down remaining barriers to participation at EU and national level:

- Fees for participation and in some NSBs even for commenting on standards are barriers to participation. Whereas the standardisation system has to cover its cost, it is highly questionable whether stakeholders without any commercial interest in the result representing a specific public interest while contributing technical expertise, should be requested to participate in the financing of the system. ECOS currently pays almost € 16.000 p.a. to CEN and CENELEC in fees for its status and participation. This is a considerable percentage of its budget for standardisation. The European umbrella associations of industry such as FIEC or CEFIC pay the same annual associate fee to CEN as ECOS does (or even less because of a different treatment of VAT).
- Some red tape (e.g. for ISO-liaison applications) and numerical restrictions in technical bodies (often limited to one person per organisation on the mailing list or with access to livelink) should be reduced.

ESOs and NSBs should ensure communication BEYOND the system boundaries, especially for public enquiries on new standards. Most of the time such communication is directed at the current participants of the system. More direct communication directed to them could be an incentive for national ENGOs to get involved in certain work items.

It should be better defined what “consensus” means in practice and what an organisation / a stakeholder group can do if it feels its legitimate concerns have not been incorporated into a standard. If an organisation / a stakeholder group feels it does not have a say in the final decision, it will hardly get involved.

ENGOs usually are not standard-users and therefore generally do not dispose of standards in their offices, but often a considerable number of reference standards is needed to give adequate input. To give just one example: In the work of CEN TC 351 (Dangerous substances in construction products) the ISO 16000-series of building standards was crucial as reference documents, but ECOS did not dispose of these documents to provide them to its expert. It would help participation in technical work to provide better access to reference standards in technical bodies and/ or to standards catalogues for specific recognised organisations.

European umbrella organisations of stakeholders are generally (ECOS definitely is) open to cooperate with NSBs to enhance the involvement of their specific member or partner organisations. The EXPRESS report includes such a recommendation. As an example, ECOS is currently delivering a project in the UK to create a specific ENGO focal point on standardisation. BSI supports this endeavour.

Another point is of specific relevance for ENGOs: CEN has developed a toolbox (with strong participation from ECOS) to enhance the integration of environmental aspects into standards, e.g. environmental training, guides, checklists, mandatory steps in the procedure to integrate environmental thinking. If such tools were used more and more systematically and promoted at national level, it could be an incentive for ENGOs to use them and participate.

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?

- Public authorities should be requested to support their participation. For environmental NGOs the biggest need lies at national level (given the existing albeit modest funding for ECOS). ECOS would also like to recall the numerous recommendations in that sense in EU standardisation policy documents, e.g. Council conclusions.
- Where NSBs are directly supported, some of that money should be diverted to support such participation. A percentage of the money provided by the European Commission to fund mandates could also be earmarked.
- The EXPRESS report recommends to the Commission / EFTA to continue funding for the European stakeholder organisations beyond 2013. ECOS wholeheartedly supports this recommendation.
- In legislation concerning these specific public interest matters (environment, labour/OHS, consumer issues) such participation could be specifically requested by the European legislator.
- Financially support their participation in delegations to EU/ international meetings.

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

1. Management of the Secretariats of Technical Committees?

2. Notification of new national standardisation projects?

3. Promotion/sales of standards?

4. Other?

It is up to them to answer this question.

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?

This could be interesting to try, e.g. to implement mandates and specific provisions on stakeholder participation. It might give the European Commission as well as the weaker stakeholders identified above a better means to make their voice heard on standards implementing public policy objectives.

This practice has already been used (though on rare occasions) and is more frequently the case for short-term strategic activities, for example organising (BT) Working Groups to assess stakeholder requirements in specific areas. In that area it has its merits. It has to be borne in mind, however, that the CEN-CENELEC Management Centre might require additional human and financial resources and expertise to carry out additional tasks.

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?)

If a mandate is passed on to the international level (a recent example: Mandate M/356 EM(A)S staged approach for SMEs to ISO), organisations of weaker stakeholders (with an actual stake in the issue, of course - in this case ECOS and NORMAPME) should be supported to participate, e.g. by earmarking a percentage of the funding for the mandate for them. They can follow this work more (cost-)efficiently than the Commission-services themselves.

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?

As a matter of principle, there should always be a case by case analysis what the best regulatory option for the implementation of a given legislative disposition actually is. The criteria for that analysis will often be technical, but can also be political. E.g. where corporate dominance is feared in standardisation or when the respective documents have to be available very quickly, such a call could be considered as an alternative.

In any case an essential condition would be that the contractor ensures a balanced consultation with all relevant stakeholders.

In the past environmental organisations have criticised the European legislator for sometimes NOT drawing the line between legislation and standardisation appropriately. While it is common ground in principle between all parties that standards should not set any thresholds, e.g. for emissions of pollutants, sometimes decisions which are of almost equal normative value, are left to standardisation bodies, e.g. which heavy metals have to be measured in a given case. This occurred in the area of Solid Recovered Fuels (CEN TC 343). More details on this case can be found at the ECOS website at:

http://www.ecostandard.org/downloads_a/ecos_position_paper_on_srf_standard_2005.pdf

This is not a fault of the standards bodies, but can stem from inadequate political compromise (e.g. within the Council or between Council and Parliament) or an ill-conceived mandate. The standards bodies should in such a case have the strength to highlight and/or seek to rectify such problems with the political mandate themselves.

However, in the first place environmental NGOs call on the European legislator to define well where its regulatory powers and technical competence end. In case of doubt, a slight overregulation is more acceptable from a governance point of view than too generous a deregulation by delegation of regulatory powers to technical committees. In our view the latter certainly does not qualify for the label "better regulation".

The Commission then has the possibility to correct ill-conceived borders between the two areas by choosing the way of a call for tenders in such a case.

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

ECOS answer to this question has several facets:

1. We take it this question does not refer to purely national level work, but to work items being treated at the European or international level.
2. The basic level of decision-making is national.
3. On some work items participation needs to be ensured at all levels (e.g. national and European or international) to have an impact. Unfortunately only stakeholders with a lot of resources can afford to do that. This is an aspect where potential problems with balance can occur.
4. For any level, but even more importantly so for European and international work, coordination of a stakeholder group at the respective level is required.

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

- Harmonisation to avoid several technical solutions which are, at worst, incompatible (e.g. plugs and sockets). Such diverging solutions create more resource use and waste by a multiplication of products. They also imply higher cost for the consumer.
- Adds strength and market power to European solutions on global markets.
- For environmental NGOs it allows insight and participation we do not have at the national level.

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?

Up to them to answer this question.

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

Up to them to answer this question.

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