



26 July 2006

ECOS POSITION PAPER ON THE REVISION OF THE NEW APPROACH

REFERENCE: COMMISSION WORKING DOCUMENT “CERTIF 2005-16 REV. 2: ELEMENTS FOR A HORIZONTAL LEGISLATIVE APPROACH TO TECHNICAL HARMONISATION”

ECOS, the European Environmental Citizens' Organisation for Standardisation is an association of NGOs active in the field of environmental protection, which themselves have more than 26 Million individual members. It has been created in 2002 as a non-profit association under Belgian law to enhance the voice of the environment within the European standardisation system. ECOS is supported by the European Commission and EFTA. Its secretariat is based in Brussels. For areas of priority and further information see www.ecostandard.org.

INTRODUCTION

ECOS acknowledges the fact that the New Approach to Technical Harmonization has contributed to the completion of the Internal Market and has been mainly a success in the field of safety and the free movement of goods. However, in recent years, while extending its use to environmental issues ECOS has observed serious shortcomings in ensuring that environmental considerations are adequately taken into account in New Approach standards. For instance, ECOS (as well as its sister organisation ANEC – the consumer voice in standardisation) opposed the publication of the “revised” packaging standards in 2005¹ - in vain. Further more, environmental NGOs are concerned that standardisation may lead to deregulation, while the procedures of its implementation are not up to democratic standards that should be mandatory for such a transfer of competences to private bodies. If the European Commission can not find a solution to how to make the New Approach work for the environment, ECOS needs to reject any expansion of the role of standardisation in the field of the environment. The current revision of the New Approach does not address ECOS' expectations in that respect.

ECOS had expected a revision of the process by which the EU Commission would deal with the European Standard Bodies, for example on the following issues:

- How the New Approach Directives have to be designed to guarantee meaningful protection of the environment and health,
- How the mandates should be developed in order to give clear indication regarding the contents of the standard and

¹ For a detailed assessment of these standards see joint ANEC/ECOS position at:

http://www.ecostandard.org/downloads_a/anec&ecos_on_revised_packaging_standards_jan05.pdf

- How the new standard should be checked afterwards and adapted or even publicly rejected in case it does not meet the essential requirements of the directive and the frame of reference of the mandate.

ECOS had hoped for a horizontal directive that would make it a requirement to take environmental aspects into account. Instead of getting a revision that improves the cooperation between legislator and standard bodies we are confronted with an extension of the conformity assessment procedure. This means the new horizontal directive will deal in first place, and in greatest detail, with the improvement of market surveillance based on the Directive on General Safety for Consumer Products (RAPEX). ECOS agrees that better market surveillance is needed. However, our greatest concern is the quality of the rules that are surveyed.

The problems are generated by the instruments needed to carry out the New Approach, e.g. that it is almost entirely based on standards bodies, which are dominated by business interests and which – as a result of a marginal representation of public interests – do not ensure balanced decision making. Further more, the set up and processes of the standards bodies disadvantage minority positions. Whereas this set up might have delivered and might be sufficient in a number of areas of “classical” standardisation, this is clearly not the case when environmental issues are at stake. In the light of the challenge of climate change, this reserve has to be extended to energy (efficiency) issues.

Thus, the basic idea of the New Approach, that details in the regulation are left for settlement by relevant market stakeholders, holds only when there is a clear interest and a clear relation between regulation and impact. In the field of safety, this is normally the case: Businesses do not want to face legal charges due to human damage caused by their products, because this is expensive to the producer and because often causal links can be established between a product deficit and an accident. In the case of environmental issues, the situation is totally different. It is seldom possible to identify a clear cause-effect chain, and there is no general producer responsibility for effects on the environment caused by products. It is very difficult to trace back from an impact on the environment to the specific cause, i.e. the actual polluter. And if it is possible it is normally very difficult to hold the producer legally liable. Therefore, if the New Approach should be used in general for environmental regulation, then business responsibility must be extended and knowledge of cause-impact relations must be firmly incorporated in the procedures.

Another aspect about the New Approach is that it has never been used as intended. The idea was that all political aspects should be settled by the political processes prior to the standardisation work phase. But in most cases over the past 20 years, some degree of political decision like limit or emission values or similar parameters, have been left to the standardising process. This practise must stop.

Therefore, ECOS and its member organisations are of the firm opinion that a fundamental review of the New Approach is needed, going beyond the current Commission proposal, in order to improve the balance between public and business interests. This should be done by strengthening the role of public authorities when implementing public policies by elaborating detailed specifications. For instance, it should be clearly stated (and the standardisers usually agree with this assumption), that no limit values or parameters of similar nature (e.g. a minimum calorific value for a fuel or its acceptable heavy metal content) should be left to standardisation.

It is the task of standardisation to select measuring and sampling methods for the purpose of monitoring the meeting of limit values or other highly controversial key requirements. Whenever it is difficult to draw the line between the two and whenever the legislative level has not appropriately fulfilled its part (because often the standardisers are not to blame) and left such a controversial question unresolved, standardisation should be complemented by the option to task a Committee of Member States (referring to the Comitology decision), complemented by an expert group (stakeholder advisory forum), to fill the above-mentioned

gap. It could give also guidance on the selection of measuring and sampling methods for the purpose of monitoring the meeting of limit values or other highly controversial key requirements, to resolve problems encountered in the standards bodies and to react on market developments in a quick and flexible way. This procedure has to be transparent and open to all stakeholders, in particular public interest stakeholders, such as environmental and consumer NGOs

The successor of the "98/34-committee" of Member States should be upgraded to a Comitology-committee, which would give Member States and also the European Parliament (under the recently revised Comitology-procedure) a greater say in standardisation policy. We do not endorse the analysis in the reference document regarding "*the principles that the public authorities keep the last say, and that the system provides mechanisms for ensuring a high level of confidence in the results*".

Furthermore, we are convinced that a democratic reform of the European standards organisations is needed. To this end, ANEC has elaborated a catalogue of measures to improve public interest stakeholder participation in CEN and CENELEC. ECOS entirely supports this catalogue.

Last but not least, environmental NGOs do not agree with the extended use of the New Approach in policy areas such as environment, energy and health, unless the reforms mentioned in this document have been implemented. The New Approach should not be considered as the general model applicable in the whole products or services area.

In order to address these challenges, the European Commission has issued its Communication (COM/2004/130 final) "Integration of environmental aspects into standardisation" in 2004. Whereas ECOS welcomes the publication of this document; it feels that the degree of its implementation is not satisfactory yet. When reporting on the progress of its implementation, the Commission should be assisted by an advisory stakeholder panel.

In that context we would like to emphasize art. 6 EC-treaty, according to which "Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities". ECOS is of the opinion that this is not yet sufficiently the case in standardisation policy.

The basic legal act regarding the New Approach, be it a substantially revised directive 98/34 or a new legislative base for the New Approach, should take this duly into account.

SPECIFIC COMMENTS

Legislative strategy

ECOS believes that there is a need for more consistency across the board of the New Approach Directives and therefore welcomes the initiative of the European Commission to set a joint framework for the essential requirements common to all New Approach directives, such as common definitions, requirements for the development of European standards, common approach to conformity assessment as well as the rules and procedures for a common 'safeguard' mechanism.

Delegating the elaboration of technical specifications to organisations other than the European standards bodies might offer new options. For some issues, ECOS recommends to refer to the framework of the ISEAL Alliance platform (International Social and Environmental Accreditation and Labelling). The ISEAL Alliance is an association of leading international standard-setting, certification and accreditation organisations that focus on social and environmental issues. ISEAL members have in common that the standards and accreditation programs they develop are voluntary, truly international in nature and focusing on non-product

related process and production method certification. ISEAL members are also committed to ensuring that their activities are in line with international norms and do not act as barriers to trade². The current EC-framework for standardisation would benefit from closely looking at this alternative model.

Motivations

Whilst we agree that an EU legislative framework for those aspects common to all New Approach directives will improve the efficiency of the New Approach, we do not believe that this is sufficient in light of the extension of the New Approach to new policy areas such as the environment.

Standardisation plays a prominent role in the 2005 re-launch of the Lisbon objectives and is considered one of the key factors to enhance Europe's competitiveness. The Commission wants therefore not only to extend the application of standards to replace legislation but also to privatise market surveillance. The Commission starts from the assumption that the standardisation part of the system is working well which ECOS is not convinced of regarding environmental aspects after its experiences, e.g. with the Packaging and the WEEE Directive. There is a need for more surveillance of the standards that have been developed in order to complement the legislative texts and mandates. There is a procedure missing that allows the Commission to intervene in case the essential requirements of the underlying legislative text or the terms of reference of the mandates have not been met. In this case a public rejection of the standard in question has to be stated. A simple non-publishing of the standard is not sufficient for demonstrating disagreement.

The intention to replace a part of environmental legislation by standardisation would have a direct impact on the environmental performance of the rules and processes elaborated. Therefore it is vital that the view of environmental NGOs is an integral part of this concept. Furthermore, there is a need to reform the European standardisation system so as to ensure that it is equipped to cope with these future tasks, at least when it is used for the implementation of public policy.

Effective participation of public interests stakeholders in the standardisation process is a precondition for the legitimacy of the New Approach, promoted by all political institutions in the EU. Therefore ECOS and its member organisations believe that rules or rights for public interest stakeholders, such as civil society representatives, need to be reinforced, in particular in standardisation work related to the public interest and when extending New Approach principles to areas which have so far been relying mostly on regulation.

In the longer term, the standardisation system needs to change so as to ensure fair and equal rights for commercial and non-commercial interests in the field of standards of public interest. This future system would be based on balanced representation, with committees embracing defined numbers of seats and their allocation to stakeholder groups in a balanced way.

By participating in the political level bodies of CEN and CENELEC, ECOS has the opportunity to propose such changes to processes that could make significant improvements in governance. However, we are just at the beginning of a reform process and still encounter a lot of resistance to our proposals.

For instance, ECOS proposes:

- to give a vote to other stakeholders than National Standards Bodies in CEN and CENELEC when it comes to the final approval of standards (this would apply to those stakeholders that have actively and continuously contributed to the development of a given set of standards),

² <http://www.isealalliance.org/>

- to abolish fees to Standards Bodies (be they European or National) for those stakeholder groups that represent the public interest (such as consumers, trade unions and environmental NGOs) and do not have an own commercial interest in standards development,
- To improve and to systematise the check of compliance of mandated standards with the mandate and the directive it is based on. The more independently this compliance check is carried out, the better for all parties involved. In case compliance is contested, there should be a means of legal review, e.g. by the European Court of First Instance. Such a legal review should also include the aspect, whether the dispositions in directives and mandates are sufficiently clear in order to allow for the elaboration of compliant standards.
- To establish a committee of experts and a guidance document which together aim at approving if a New Approach directive leaves only non-political and purely technical issues to the standardisation process. The guidance document shall contain lists of political issues and of non-political issues, which shall form the basis for the expert committee to approve or not the directive's readiness to delivering a mandate to the standardisation process. The committee must have the possibility to revert the draft directive to the regulators for improvement as long as there are still unsolved political matters in the directive.

The idea that there are groups participating in the standardisation process not because of their own economic interest, but for the good of society, has not yet been sufficiently understood by all the actors in the process.

The Standardisation Bodies should aim at structural changes in order to enhance minority positions by counterbalancing existing inequalities, thus ensuring more equal and fair chances for all stakeholders to influence the standardisation process and to have their views taken into account. We hope that the ANEC-proposals which ECOS support will be taken into consideration in the course of the current review of the CEN Strategy.

Financial considerations

ECOS acknowledges that apart from gearing up the CEN/CENELEC system for balanced representation, improved public interest stakeholder participation also requires the availability of financial resources. Therefore, we call upon the European Commission and Member States to enshrine in legislation the obligation for national governments to provide funds for public interest stakeholder participation in standardisation.

One aspect at the outset of the creation of the New Approach was the intention of public bodies (EU and national level) to save resources and to "outsource" part of the implementation work of legislation. However, the Commission (e.g. DG Environment and DG TREN) and national environmental authorities don't have sufficient resources (anymore) to participate in most standardisation work that would be of relevance and interest to them in an appropriate way.

Public authorities, both EU and national, should assess whether the concept is still valid seen from a cost effectiveness perspective, taking into account the resources that public bodies need to be delivered what they have commissioned and that public interest stakeholders need to make a meaningful contribution to the process:

- Which resources have been saved by public authorities?
- How much will it cost to bring (back) democratic legitimacy to the process?

Many of the above-mentioned ideas and challenges identified can also be applied to the national level Standardisation Bodies.