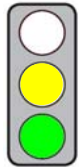


## MAIN ISSUES

**Objective of the Regulation:** The legal framework for European standardisation is to be modernised in order to make the development of standards more efficient and transparent. In future, it will also cover services.

**Parties affected:** Companies using standards, European and national standardisation bodies.



**Pros:** (1) Europe-wide standards für services help increase efficiency, reduce uncertainty and promote competition.

(2) Annual work programmes, granting financial support in the form of lump sums and linking them to the compliance with set deadlines, all increase the efficiency of standardisation procedures.

(3) The recognition of ICT-related specifications increases the efficiency of public procurement.

**Cons:** The formulation and enforcement of “common cooperation objectives” entails the danger of standards being abused for policy targets and as a result becoming less efficient.

## CONTENT

### Title

**Proposal COM(2011) 315** of 1 June 2011 for a **Regulation** of the European Parliament and the Council on **European Standardisation** and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and of the Council

### Brief Summary

Note: Unless otherwise provided for, the articles quoted refer to the Regulation COM (2011) 315.

#### ► Background and objective

- European standardisation means the definition of technical or quality specifications by recognized standardisation bodies. Standards are recommendations relating to products, production processes or services to be observed voluntarily, unless declared legally binding or by contract. By complying with the respective standards, it is assumed that products, production processes or services will conform with statutory requirements.
- European standards (Art. 2 (1) lit. b) replace national standards which represent a technical barrier in the internal market. Concerning the European standards, it is important to differentiate between those whose elaboration:
  - is mandated by the Commission to European standardisation bodies (“harmonised standards”, Art. 2 (1) lit. c), and
  - those launched by companies, interest groups or national standardisation bodies with the European standardisation bodies.
- With a reform of the legal framework for standardisation the Commission wishes to establish an “efficient and technically up-to-date European standardisation system” (s. Grounds for the Proposal, p. 1).

#### ► Reform of the legal framework

- With the proposed Regulation, the legal framework is to be reformed as follows:
  - The Directive on information procedures in the field of technical standards and regulations (“Information Directive”, 98/34/EC) is to be amended; certain provisions will be modified in the Regulation.
  - The decision on the financing of European standardisation (No. 1673/2006/EC) is to be repealed; the financing provisions will be modified in the Regulation.
  - The decision on standardisation in the field of ICT (No. 87/95/EEC) is to be repealed; the provisions will be modified in the Regulation.
- In future, the Regulation’s scope will also cover services (Art. 1). European standards for services will then be promoted through “a part of the costs” of the standards mandated by the Commission being financed by the EU (cp. p. 5).

#### ► Standardisation request process

- As part of an annual Work Programme, the Commission will announce its standardisation plans, the elaboration of which is to be mandated to the European standardisation bodies (Art. 6 (1)).
  - The Work Programme contains “the specific objectives and policies for the European standards” related to the standardisation mandates (Art. 6 (2), p. 1).
  - In “cases of urgency”, the Commission can also issue requests for standardisation outside the Work Programme (Art. 6 (2) p. 2).

- The Commission may request that one or several standardisation bodies draft standards “within a set deadline”. The standardisation request must be “market-driven, take into account public interest and be based on consensus” (Art. 7 (1)).
  - The relevant European standardisation body shall indicate within one month of receipt if it accepts the request to develop “harmonised standards” (Art. 7 (2)). Within three months of receipt of the request the Commission is to inform the standardisation body if funds are granted for the development of standards.
- **Member States’ objections to harmonised standards**
- If a Member State chooses to object to a harmonised standard, it must inform the Commission thereof (Art. 8 (1)). Upon consultation with a committee consisting of Member States’ representatives, the Commission then decides whether or not the objections are justified and
    - whether or not to publish or to publish with restriction the references to the harmonized standard concerned in the Official Journal of the European Union (Art. 8 (2) lit. a, (4)), or
    - to maintain “with restriction” or to withdraw them (Art. 8 (2) lit. b, (5)).
  - The Commission informs the standardisation bodies concerned as to its decision and then, if necessary, requests the revision of the standardisation.
  - The existing diverging provisions under different EU regulations on raising objections to harmonised standards are to be harmonised with the Regulation (Art. 20 (1), Recital 18).
- **Financing of European standardisation**
- The EU grants European standardisation bodies and other bodies related to standardisation financial means for standardisation activities in the form of:
    - grants for actions (Art. 13 (2) lit. a in conjunction with (1));
    - operating grants, which in the event of renewal shall not automatically be decreased (Art. 13 (2) lit. b; Recital 27).
  - For the development and revision of European standards and the verification of their conformity with EU legislation and other EU “political measures”, general “lump sums” are paid if:
    - the standards are developed, revised or reviewed within a set deadline (Art. 13 (4) lit. a in conjunction with Art. 7 (1)) and
    - SME and interest groups are “appropriately” represented in European standardisation work (Art. 13 (4) lit. b in conjunction with Art. 5 (1)).
  - The Commission specifies the amount of the grants and, where necessary, the maximum percentage of financing by type of activity and the financing modalities (Art. 13 (3)). It concludes “framework partnership agreements” in which the “common cooperation objectives” and the “administrative and financial conditions” for financing are defined (Art. 13 (5)).
- **Transparency in standardisation processes**
- The transparency procedure obliges both European and national standardisation bodies to:
    - publish annual Work Programmes on standards that it intends to prepare or amend, on the development status and the international standards referred to (Art. 3),
    - send draft standards to the Commission or its standardisation bodies “upon their request” (Art. 4 (1)), and
    - reply to “comments” of other standardisation bodies and the Commission and to take them into account in standardisation (Art. 4 (2)).
  - National standardisation bodies must:
    - publish standardisation drafts in such a way that interested parties established in other Member States have the opportunity to “submit comments”; and
    - allow other national standardisation bodies to be involved passively or actively in the planned standardisation activities (Art. 4 (3)).
- **Participation of SMEs and interest groups in standardisation**
- The European standardisation bodies (CEN, CENELEC, ETSI) “ensure” at different “stages of development” an appropriate representation of SME, consumer organisations and environmental and “social stakeholders” in the European standardisation procedures (Art. 5 (1)).
  - This is to be carried out “in particular” through European “organisations representing” groups. They are to comply with “appropriate qualifications” (Recital 14, Annex III); among other things they are to be:
    - non-governmental,
    - non-profit-making and
    - mandated by national non-profit consumer organisations (e.g. consumer protection associations) in at least two thirds of the Member States, in order to represent the interests of consumers in the standardisation process at European level.
  - The Commission may adapt the “qualifications” as regards their non-profit-making nature and “representativity” to “developments” (Art. 16 lit. c in conjunction with Art. 17).

- The EU grants European “organisations representing” national stakeholder groups financial means for their involvement in standardisation (cp. Art. 12). This can include:
  - grants for actions (Art. 13 (2) lit. a in conjunction with (1) lit. c), and
  - operating grants which in the event of renewal are not automatically decreased (Art. 13 (2) lit. b in conjunction with (1) lit. c).
- The Commission is to decide on the grants, where necessary, on the maximum percentage of financing “by type of activity” and the financing arrangements (Art. 13 (3)). It concludes “framework partnership agreements” with representing organisations, in which the “common cooperation objectives” and the “administrative and financial conditions” for financing are defined (Art. 13 (5)).

#### ► **ICT standardisation**

- Due to the rapid development in the field of ICT (e.g. internet), many technical ICT specifications are not developed by standardisation bodies but by “global fora and consortia”. Usually, these are globally oriented associations of companies and bodies uniting to coordinate technological developments.
- The Commission can on its own initiative or “on the proposal” from authorities (quoted in Directive 2004/18/EC) recognise ICT-related technical specifications. The precondition for that is that these specifications comply with set “requirements” (Art. 9 in conjunction with Annex II). These “requirements” which have to meet the technical specifications refer to:
  - the market acceptance and interoperability of existing European and international standards;
  - the quality, availability and other features; and
  - the development of non-profit making organisations in compliance with the principles of openness, consensus and transparency.
- The Commission is empowered to “adapt the criteria [...] to technical developments” (Art. 16 lit. b in conjunction with Art. 17).
- The ICT standards recognised by the Commission are to be deemed “common technical specifications” established at European level to be referred to in public procurement [Art. 10 REG in reference to Directive 2004/17/EC (Art. 34, Annex XXI No. 4), Directive 2004/18/EC (Art. 23, Annex VI No. 4) and Regulation No. 2342/2002 (Art. 131)].

### **Changes to the Status quo**

- To date, the legal framework for European standardisation applies to products only. Now it also includes services.
- In future, the Commission will adopt annually a Work Programme containing the aspired to standardisation requests. Newly introduced is a procedure which is subject to set deadlines for granting standardisation requests to European standardisation bodies.
- Each European and national standardisation body is obliged to publish their Work Programme independently. To date, Work Programmes are conveyed only upon the request of the Commission.
- The different rules in various quality and security-related EU provisions with regard to objections to standards are to be harmonised.
- In future, ICT specifications developed by “fora and consortia” can be recognised by the Commission. In public procurement they can afterwards serve as a reference.

### **Statement on Subsidiarity by the Commission**

The harmonisation of EU standards removes technical trade barriers resulting from contradicting national standards. The development of standards at European level can be reformed at this level only.

### **Policy Context**

See [CEP Background](#) (in German).

### **Legislative Procedure**

01 June 2011      Adoption by the Commission

### **Options for Influencing the Political Process**

Leading Directorate General:	DG Enterprise and Industry
Committees of the European Parliament:	Internal Market and Consumer Protection (in charge), Rapporteur: Lara Comi (EPP Group, IT)
Committees of the German Bundestag:	Economics and Technology (in charge); EU Affairs; Food, Agriculture and Consumer Protection; Cultural and Media Affairs
Decision mode in the Council:	Qualified majority (adoption through the majority of Member States and with 255 of 345 votes; Germany: 29 votes)

## Formalities

Legal competency:	Art. 114 TFEU (Internal Market; ex-Art. 95 EGV)
Form of legislative competency:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure; ex-Art. 251 TEC)

## ASSESSMENT

### Economic Impact Assessment

The existing description and assessment criteria for services are normally based on national standards. Their differences impede competition, as they increase the costs of market entry for companies from other Member States. **Europe-wide standards for services increase efficiency on the supply side and facilitate a price-performance comparison on the demand side. Moreover, they reduce uncertainty and thus promote competition.**

**The planned development of annual Work Programmes drawn up by the Commission and the procedure deadlines** described in the Proposal **will reduce standardisation development periods**, for they help European and national standardisation bodies to respond to the Commission's standardisation requests early.

Equally efficiency-enhancing is **the proposal to grant financial support in the form of lump sums and to link them to deadline compliance**. This **sets incentives to keep the costs and therewith the duration of standardisation procedures as low as possible**. Changing over to flat rate financing without examining the actual costs reduces administrative burdens.

**Problematic, however, are the "common cooperation objectives". The Commission does not define these objectives conclusively. Therefore, there is a danger that the Commission might exploit standards for policy targets which are not democratically legitimated** and that these targets are not reached at the lowest possible cost, which would decrease the efficiency of standards.

EU subsidies to consumer, environmental and similar associations, aimed at motivating them to develop standards, are a mistake. It is their statutory aim to represent the pertaining interests. If they are not active, then this means that they do not deem standardisation issues a priority. However, the qualification criteria proposed by the Commission for representing organizations are suitable in order to create as close as possible ties to the interests to be represented.

**The recognition of ICT-related specifications** developed by "fora and consortia" **increase the efficiency of ICT-related public procurement**, as public contractors could refer to them. **The requirements proposed** by the Commission regarding the recognition of technical specifications ensure that through recognition no monopolies are created, as the aforementioned specifications might contain manufacturer-owned technologies. Moreover, the requirements ensure **that technical specifications are recognized only if the developing "fora and consortia" comply with the principles of openness, consensus and transparency.**

### Legal Assessment

#### Legislative Competency

European standards prevent technical impediments from being imposed on the internal market through contradictory national standards. The reform of European standardisation can therefore be based on Art. 114 TFEU (internal market), as it aims at an improved functioning of the internal market.

#### Subsidiarity

The European standardisation system can be reformed at EU level only.

### Conclusion

Europe-wide standards for services increase efficiency on the supply side and facilitate a price-performance comparison on the demand side, reduce uncertainty and thus promote competition. A work programme that is to be published annually by the Commission helps reduce the development periods of standards. Financial support paid as a lump sum for European standardisation and linking this to compliance with set deadlines creates incentives to keep the costs as low as possible. The recognition of ICT-related specifications developed outside European standardisation bodies increases the efficiency of public procurement. The formulation and enforcement of "common cooperation objectives" under partnership framework agreements for financing entails the danger of standards being abused for policy targets, which might reduce their efficiency.