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COMMISSION STAFF WORKING PAPER
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF 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

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1. PROBLEM DEFINITION

This document only concerns the European standardisation system in which the three independent European standardisation organisations CEN, CENELEC and ETSI (hereinafter referred to as “ESOs”) play a key role, and the standards for interoperability in the field of ICT.

Standards and standardisation are very effective policy tools for the EU. The mere existence of standards is trade-enhancing because of their positive cost-decreasing effect and the reduction of information asymmetries between the supply and the demand sides, especially in the case of cross-border transactions. Several econometric studies have established a clear connection at a macroeconomic level between standardisation in the economy, productivity growth, trade and overall economic growth. Studies show that existing standards contribute to GDP at the rate of about one percentage point per annum. Although standards and standardisation have much wider benefits for the European economy, they are used as policy instruments to ensure, inter alia, the functioning of the single market, the interoperability of networks and systems, in particular in the field of ICT, a high level of consumer and environmental protection, and more innovation and social inclusion.

However, the public consultations of stakeholders and a report of the European Parliament on the future of European standardisation¹ indicated that certain problems need to be addressed.

European standards play a very important part in the functioning of the internal market for industrial products. European standards replace national and often conflicting standards which, as such, may create technical impediments to a national market. European standards can, for the purpose of this impact assessment, be divided into 2 categories:

- European standards developed at the request of the Commission, on the basis of a so-called “mandate” in which the ESOs are requested to draw up technical specifications of a normative nature that meet the requirements set out in the mandate. These standards can be subdivided into 2 subcategories:
 - Harmonised standards which ensure that products meet the essential requirements set out in EU legislation. Compliance with a European “harmonised” standard guarantees the required level of safety of products. However, use of harmonised standards is still voluntary and a manufacturer may use any other technical solution which demonstrates that his product meets the essential requirements. The percentage of European standards that are harmonised standards has increased in the

¹ A7-0276/2010.

last two decades from 3.55% to 20% in 2009. This shows the increasing importance of standards as an instrument to accompany EU legislation².

– Other European standards to support European policies;

- The remaining European standards are adopted outside EU legislation at the initiative of undertakings, NSBs or other stakeholders, or at the request of the Commission.

1.1. Problem 1: the process for adopting European standards requested by the Commission is not fast enough

In a rapidly changing world and society, especially in sectors characterized by very short product lives and development cycles, standards must keep pace with rapid technological development. Some stakeholders argue that the entire process of creating European standards is too slow, although complaints about slowness of standardisation may be less relevant for technologies with long lead times for development and redeployment. At the moment, the development time of CEN and CENELEC deliverables is between 21.5 and 36 months while the typical time frame for ETSI is 12 to 24 months. Yet, the entire development process can be much longer for standards developed at the request of the Commission. For these standards, there are four main stages, i.e. the preparation of the mandate and the positive opinion of the committee set up under Directive 98/34/EC, the acceptance of the mandate by the ESO and the start of work on the standard, the development of the standard itself and the publication of the reference of the harmonised standard in the OJ and the objection procedure.

1.2. Problem 2: Under-representation of SMEs and societal stakeholders in the European standardisation process

Several studies showed that SMEs encounter a series of problems with respect to standards and standardisation. One of the most important problems, according to many stakeholders, is that SMEs are in general under-represented in standardisation activities, in particular at European level. Furthermore, standards often relate to the safety and well-being of citizens, the efficiency of networks, the environment and other public policy fields. Although standards play a major role in society, the opinion of relevant societal stakeholders is not sufficiently integrated in the standardisation process in the EU. In order to address the problem of insufficient representation of SMEs and societal stakeholders in standardisation activities, financial contributions are paid to organisations representing SMEs and societal stakeholders. The criteria for eligibility for these grants, the conditions for their use and the type of financial contributions available vary widely. Some organisations receive grants for actions while others also receive operating grants.

² Detailed figures can be found in Annex 3 while Annex 4 contains an overview of EU legislation using European standards as a means to presume conformity with the essential requirements.

1.3. Problem 3: “Fora and Consortia Standards” cannot currently be referenced in public procurement of ICT.

In the field of ICT, many standards ensuring interoperability are not elaborated by the ESOs but by global fora and consortia. This goes particularly for Internet and World Wide Web related standards. Mostly due to a lack of highly specialized expertise the traditional standard-setting organisations do not cover the ICT domain and so currently a major part of the global ICT standardisation work is done outside the formal European or International standardisation system.

Referencing of standards in public procurement can be an important means of fostering innovation while providing public authorities with the tools needed to fulfil their tasks, especially in lead markets such as e-health. Public procurement has to comply with Directive 2004/18/EC which differentiates between formal standards and other technical specifications, for which a description of functional requirements is additionally requested. When public authorities refer to technical standards in their technical specifications, they should also specify whether they allow tenderers to prove that their offer fulfils the specifications even if it does not comply with the technical standard referred to. However, when acquiring ICT services and products, additional requirements may prevail. Public authorities need to be able to define their ICT strategies and architectures, including cross-border interoperability and will procure ICT systems/services and products or components thereof, that meet their requirements.

2. OBJECTIVES

2.1. General policy objectives

This initiative aims at increasing the contribution of standards and European standardisation to a better functioning internal market, stimulating growth and innovation and fostering the competitiveness of EU enterprises, especially SMEs.

2.2. Specific objectives

- (1) Reduce the time taken by the standardisation process for standards developed at the request of the Commission;
- (2) Ensure that SMEs and societal stakeholders are adequately represented in the standardisation process, especially for standards developed at the request of the Commission;
- (3) Broaden the use of ICT standards and thus enhance interoperability through a more integrated European public procurement market for ICT products and services, especially in connection with the establishment of an “e-Internal Market”;
- (4) Remove ambiguities in the existing legal framework.

3. ASSESSMENT OF IMPACTS

3.1. Problem 1: the European standard-setting process is not fast enough

3.1.1. Policy Option 1.0: Base-line scenario

As described above. It serves as a reference against which the other options are assessed.

3.1.2. Policy Option 1.A: specify deadlines on the delivery of European standards.

The advantage of this option is that European standards would be available after a fairly short period. The assumption is that ESOs would accept shorter deadlines and that they could persuade technical experts willing to spend more time on developing a standard. The positive economic benefits of the earlier availability of a standard could be estimated at a growth rate of about one percentage point per annum for the product or service covered by the standard.

Besides the fact that this option would only apply to the harmonised standards and the European standards requested by the Commission, a deadline obliging ESOs to increase the speed of the formal standard-setting processes may have a negative impact on the quality of the standard. Time can only be gained by reducing consensus and correspondingly curtailing (or avoiding) one of the intermediate consultation stages.

Deadlines for all European standards and the production of at least the same number of standards in less time could lead to increased costs (more frequent meetings for example) on an annual basis. There would be an estimated additional annual cost per standard of around €150,000 to €200,000 if standards were to be finalised in 2 years. The increase in speed would only be possible if industry and other stakeholders agree to share the additional cost or if the Commission finances it. Unless specific measures would be taken, deadlines for all European standards would necessarily have a negative impact on the involvement of SMEs and societal stakeholders.

3.1.3. Policy Option 1.B: create a European Agency for Standards that would manage the standard-setting process.

The advantage of this option is that the agency would be supervised by the European legislator and that it would become more difficult to decline mandates for European standards. The creation of a new European standardisation agency would mean that requests for harmonised standards would be handled as a priority. The level of duplication of administrative resources and expenses would be lower and all the available expertise would be pooled. In addition, the participation of SMEs in the standardisation process could be improved.

However, this option has a number of considerable drawbacks. It requires, above all, close cooperation with the NSBs to make it viable. An agency on European standardisation could not operate without their support. Moreover, an agency could not provide the level of expertise necessary to perform effectively the tasks of a technical committee. Therefore, consensus between the experts would still be necessary, regardless whether the work was done under the auspices of an ESO or an agency. This option would certainly lead to substantial additional costs for the EU-

budget. The Commission currently contributes 21.2 million euro, i.e. around 47% of the total income of the three ESOs (€44,000,000). The rest of the ESOs income is mainly financed by members' fees and contributions. It has to be kept in mind that the number of standards mandated by the Commission is a fairly small proportion of the total deliverables issued by ESOs.

3.1.4. Policy Option 1.C: transparent and simplified procedures for harmonised standards and other European standards requested by the Commission.

A more organised regular annual or multiannual programming process would increase the workload of the services of the Commission but would have a general positive impact. It would enable ESOs to anticipate upcoming requests and shorten the acceptance process so that harmonised standards would be more rapidly available on the market for use by businesses. This option would have a positive impact on the internal market and the competitiveness of businesses (including SMEs) by shortening the period for issuing mandates by approximately 6 months (by removing the separate consultation of the committee) while another 6 months could be cut at the end of the process through efficiency gains when objections are raised. No negative impacts or supplementary costs can be identified. Although this option has an overall positive impact without any negative impacts, the main disadvantage is that it would only apply to harmonised standards and standards developed at the request of the Commission, so it would have no impact on the speed of other European standardisation work.

3.2. Problem 2: Involvement of SMEs and societal stakeholders in the European standardisation process

3.2.1. Policy Option 2.0: base-line scenario (i.e. the financial contribution to SME and societal stakeholder representation)

As described above. It serves as a reference against which the other options are assessed.

3.2.2. Policy Option 2.A: Facilitate direct representation of SMEs and societal stakeholders within the European standardisation organisations

Long term direct participation of technically aware staff of individual SMEs and societal stakeholders in the meetings and discussions of a technical committee allows this staff to build a reputation within the standardisation organisations. In addition, staff can work directly to influence the process. Participation in the standardisation process requires a strong technical understanding of proposed standards and their context. In addition, participants need to be prepared to commit up front to substantial investments of the time and energy necessary to follow ongoing internal discussions about the subject of the future standard. The generally accepted guideline is that meaningful participation in any technical committee or working group requires a baseline of approximately 20% of a person's time.

3.2.3. *Policy Option 2.B: Grant voting rights to organisations representing SMEs and societal stakeholders within the European standardisation organisations*

Granting voting rights to a very limited number of representative organisations on technical work within CEN would have a very positive impact on the involvement of SME and societal stakeholders. Other delegations with voting rights would have to take into account the views expressed by delegates of SMEs and societal stakeholders. No negative impacts could be identified. However, granting voting rights to organisations other than NSBs needs to be negotiated and agreed with the members of the ESOs, so the feasibility of this option is uncertain. Furthermore, it may entail the payment of a higher membership fee which would increase the cost of this option for organisations representing SMEs and societal stakeholders.

3.2.4. *Policy Option 2.C: Strengthen the position of organisations representing SMEs and societal stakeholders within the ESOs by providing for the possibility of an operating grant*

The positive aspect of this option is that it provides for the possibility of continuous support to organisations representing SMEs and societal stakeholders so that they could consolidate their role in the standardisation process. The other positive aspect is that the possibility of an operating grant contains a strong impetus for ESOs to continue considering these organisations as solid partners in the standardisation process so that the opinions of these organisations are adequately taken into account during the technical work on European standards. However, this option would require an exception to the degressivity principle in the basic act underlying the award of the grants. Furthermore, this option requires that the budgetary amounts which are currently scattered over several budgetary lines would be at least maintained by the budgetary authority. No negative aspects could be identified.

3.3. Problem 3: “Fora and Consortia Standards” cannot currently be referenced in public procurement of ICT.

3.3.1. *Policy option 3.0: base-line scenario*

As described above. It serves as a reference against which the other options are assessed.

3.3.2. *Policy Option 3.A: Revive the implementation of the mechanisms of Council Decision 87/95/EEC concerning public procurement and the policy*

The advantage of this option is that no legislative change is required and the corresponding administrative costs for the EU legislator and the Member States could be avoided. However, transforming Fora and Consortia standards into European standards leads to supplementary charges, responsibilities and costs for ESOs. A substantial part of the costs would have to be borne by the Commission. In addition, the ESOs would be responsible for the regular review and update of the standard. In addition, the circumstances referred to in Article 5(3) do no longer correspond to the technological reality on the market. Therefore, this possibility may require a very broad interpretation of the provisions of Decision 87/95/EEC. Due to the lack of legal certainty, the impacts on the internal market, SMEs, public

authorities, consumers and innovation would be minimal. However, there would be no budgetary impacts.

3.3.3. *Policy Option 3.B: Allow for the referencing of “Fora and Consortia Standards”*

The main advantage of this option is that the possibility of referencing selected Fora and Consortia Standards for procurement purposes on a firm legal basis is expected to counter the tendency towards market fragmentation and to have a positive impact on the internal market, especially for businesses delivering goods or services complying with these Fora and Consortia Standards. This option would have positive indirect impacts on public authorities, SMEs and consumers, considering the proliferation of high-tech consumer electronic products that exhibit network effects.

These positive impacts, however, could have corresponding risks. An important risk is that Fora and Consortia Standards could contain proprietary technologies, whereby a factual monopoly in a technology would result in a factual monopoly in the market for services and products based on the technology. This would then favour the single supplier of that technology. Thus, it would be necessary that the Fora and Consortia Standards at least observe FRAND IPR policies, as is the case with the ESOs, or operate on a royalty free basis. This is among the predefined criteria or attributes³ in the light of which they should be selected and assessed by the Commission with the assistance from stakeholders through a consultative “Platform” consisting of a very wide range of stakeholders and interested parties and without recourse to remunerated external expertise.

3.3.4. *Policy Option 3.C: Grant Selected Private fora and consortia the Status of Recognized Entities under Directive 98/34/EC.*

The impacts of this option depend on a number of external factors, such as the willingness of the selected fora and consortia to be recognised and to submit to controls with respect to the WTO-criteria on standardisation. Fora and consortia might be reluctant to apply for recognition due to the additional cost of accreditation, its periodical renewal (e.g. cost for internal audit) and the costs related to compliance with the process requirements and considerations regarding their “independence”. In case of recognition, fora and consortia would have to comply with certain procedural aspects of formal standardisation which may slow down future standard development. The recognition of private fora and consortia would pose some notable governance and co-ordination problems. Private fora and consortia usually have sizeable membership fees, which could discourage SME participation to the standardization process and represent a discrimination factor. SMEs would face increased challenges in actively participating in consortia, but fewer problems in passively observing their activities. Consequently, larger companies are more likely to gain by their active standardisation engagements. In any event, this option would require careful scrutiny of the procedural guarantees offered by the fora and consortia, as part of the selection process.

³ A list of possible attributes is set out in point 2.1 of the Commission’s White Paper on “Modernising ICT Standardisation in the EU – The Way Forward” - COM(2009) 324, 3.7.2009.

This option would entail additional costs for the fora and consortia, especially in demonstrating compliance with WTO-criteria and in particular for the process requirements and considerations regarding their “independence”. In case of recognition, the fora and consortia would have to comply with the procedural aspects of formal standardisation and would have to fulfil the duties of a recognized body. Neither of these aspects adds value to the content and quality of the standard. It would also require additional resources from the EU budget since it would be reasonable for organisations complying with all criteria to be entitled to benefit from a financial contribution from the EU.

4. COMPARISON OF OPTIONS

The policy options for the three problem areas are compared according to the criteria of effectiveness (i.e. to what extent they fulfil the specific objectives), efficiency (i.e. at which costs they do so) and coherence with other EU policies. On this basis, it is suggested that the following options be retained:

- The combination of policy Options 1.A (deadlines on the delivery of European standards) and 1.C (Transparent and simplified procedures for harmonised standards and other European standards requested by the Commission);
- Policy Option 2.C: Strengthen the position of organisations representing SMEs and societal stakeholders within the ESOs by providing for the possibility of an operating grant.
- Policy Option 3.B: Allow for the referencing of “Fora and Consortia Specifications”.