

Recognition of standards developed by industry fora and consortia for use in public procurement procedures in the EU – the importance of keeping the process simple

I. The issue

On 1 June 2011, the European Commission proposed a Regulation on European Standardisation (the "**Proposed Regulation**"), according to which ICT technical specifications developed by industry fora and consortia such as W3C, Oasis, and IETF may be recognised in the EU, and be referenced in public procurement procedures.

The decision for the recognition of such ICT technical specifications will be taken by the Commission with the assistance of a European Multi-Stakeholder Platform already established in November 2011. The European Multi-Stakeholder Platform will have an advisory role to the Commission to assist the latter with its decision on the recognition of ICT specifications. The Commission has aimed at keeping the decision-making process as simple as possible.

ECIS however understands that the Council considers amending the Commission's proposal to provide for a requirement for the Commission to follow the comitology procedure when deciding on this issue. Moreover, the Council believes that the examination procedure provided by Regulation No 182/2011 (the "**Implementing Powers Regulation**") is the appropriate procedure to be followed by the Commission to exercise its implementing powers. According to that procedure, a comitology committee – a committee comprising of Member States representatives – will consider the Commission's draft decision and will have the right to veto the adoption of that decision. On the contrary, should the less complex advisory procedure be followed, the Commission would only need to reach out to the comitology committee for their non-binding advice before the adoption of its decision.

II. Why should the examination procedure not be used for the recognition of ICT specifications?

First, under Regulation No 182/2011, the advisory procedure is the default procedure in comitology. The examination procedure is reserved to certain cases, albeit in a non-binding way ECIS questions whether any of these cases seems to be applicable in the present situation.

Second, the Council's proposal seems to disregard the purpose of the recognition of technical specifications developed by industry fora and consortia. Such recognition process does not aim at making their use mandatory, but simply at allowing public authorities to refer to such specifications in public procurement tenders without requiring that such specifications first obtain the status of a standard developed by a formal EU standardisation body. Applying such an elaborate and complex examination procedure, developed for other purposes, to voluntary use of technical standards would defeat the purpose of the proposed reform, and inhibit innovation in the EU, as it would make the use of specifications developed by fora and consortia extremely burdensome.

Finally, having the Commission follow the examination procedure to decide on the recognition of ICT specifications from industry fora and consortia would introduce an additional burden that would involve significant costs and make the process less efficient. On one hand, giving rise to any additional costs in ICT standardisation would not be consistent with the need to limit down administrative costs in the current economic climate.

On the other hand, an examination procedure would be time consuming, and eventually it would threaten to make the entire exercise futile. In view of the time sensitivities in the context of ICT standardisation, European governments would not consider pursuing the recognition of standards developed by industry fora and consortia, and would continue with the *status quo* – using solely ICT specifications developed by formal EU standardisation bodies as they each see fit and without consulting across borders. This practice has already had negative consequences on interoperability between IT systems used throughout the EU, and hence, on the efficiency of government agencies. Moreover, maintaining the *status quo* would likely increase its dampening effect on the emergence in a longer term of international IT companies from Europe as the global IT industry would look elsewhere for guidance and influence on standardisation matters.

III. The advisory procedure – a compromise

ECIS understands that one of the suggested alternatives to the recognition procedure envisaged by the Council is the use of the advisory procedure for the adoption of an implementing decision by the Commission. As noted above, the advisory procedure is a much less complex procedure, according to which the Commission would only need to reach out to the comitology committee for their non-binding advice.

ECIS believes that such a procedure would strike a fairer balance, and would address the time and costs concerns raised in the context of the examination procedure. In light of this, we strongly encourage the Council and the European Parliament to consider the use of the advisory procedure instead of the examination procedure as a compromise to the Council's proposal.

IV. Conclusion

It is important for the EU to act fast and foster convergence in the area of recognising technical specifications developed by fora and consortia that can be referenced in public procurement. So far many Member States have developed guidance for interoperability and public procurement, which lists fora and consortia ICT specifications whose referencing and use is considered as relevant, appropriate and useful. As a result, the adoption of national strategies on this matter has led to divergences in the practice adopted by each Member State that pose a threat to interoperability.

ECIS believes that using the comitology examination procedure for the recognition of ICT specifications developed by fora and consortia would threaten the efficiency of EU standardisation. For that reason, it would not be advisable to consider the adoption of the examination procedure in this context. On the contrary, the Council should rather contribute to a speedy adoption of this time-critical and long awaited reform to EU standardisation, and work towards adopting a compromise that would not eventually threaten to make the entire exercise futile.