



COMMENTS AND STATEMENT PAPER ON THE PUBLIC CONSULTATION ON THE REVIEW OF THE EUROPEAN STANDARDIZATION SYSTEM (ESS) BY THE EUROPEAN COMMISSION

The Federal Chamber of German Architects (BAK) and the Federal Chamber of German Engineers (BInGK) in Berlin are the umbrella organisations of the Architects and Engineers Chambers of the 16 German Länder – bodies of public law. BAK represents nationally and internationally the interests of more than 121,000 working architects. Among them a majority of 86.8 % works as construction architects, 6 % work as landscape architects, 4 % are registered as interior designers and 3 % as urban planners. About 80 % of our members work in micro or small enterprises whose headcount are fewer than five employees. Around 40 % work in one-man operations. The BInGK comprises more than 43.000 members - including 16.000 Consulting Engineers as mandatory members and over 20.000 voluntary members - who mostly work in SME too.

PREFACE AND GENERAL CONSIDERATIONS

The existing European Standardization System is politically and procedurally embedded through a number of European and World-wide structures such as the New Approach concept, the Vienna and the Dresden Agreement as well as the long lasting successful cooperation with the International Standardization Organisation (ISO). With their work groups and technical committees a wide range of stakeholders come together and bring their expertise for the benefit of all. Especially, for the planning profession the standardization work plays an important role. A vast number of regulations, laws and technical rules must be considered by architects and engineers within their daily work flow. Beyond that, the construction sector is one of the most restrictive and controlled sectors in Europe. We have been actively engaged with standardization bodies like the German DIN or CEN. It is therefore consequently important for our organisations to address certain aspects of the European Standardization policies and the proposed fundamental amendments made by the European Commission.

There is a noticeable tendency to shift political responsibility and public issues on the field of standardization. The BAK and BInGK appreciate certain efforts made by the European Commission to reconsider its process of developing standards by opening the possibility to invite weaker stakeholders to give contribution by their practice expertise and professional knowledge. Nevertheless, in this respect we do not share the Commission's defined reasons for a review of the European Standardization System because it puts a generally accepted and efficient system into question. It is in our understanding not comprehensible why the Commission intends to prepare this shift of paradigm within the field of Standardization which will generate severe structural and political problems. The European Commission is requested to generate their valuable ideas and projects by initiating a broad socio-political discussion on certain topics. Additionally, it would more than desirable to achieve a more coherent, transparent and sustainable approach by putting the basic principles on the European Union back in the spotlight. BAK and BInGK therefore respond to the questions of the EC public consultation as follows:

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

To integrate service standards within the scope of the Directive must be criticised because it fundamentally lacks of technical requirements and is therefore not regarded as conform to standardization. Moreover, first experiences with service standards according to the service directive show that an unmanageable number of standardization projects have arised. This has leded so far to a fragmentation lead by partial interest where neither the consumer protection nor the free internal market is supported. By contrary concerning the alternative standardization documents which do represent neither the state of technology nor the generally recognised codes of practice. Alone in 2007 more than 1.600 European construction standards projects have been registered. Straightforward comparison and transparency get more and more lost as well as increased bureaucracy, financial investments and men-power for micro and small enterprises which have reached an upper limit.

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

Service standards in the field of the construction sector are particularly embedded by national regulations and are therefore just partially applicable to standardization. If in certain circumstances standardization is regarded as useful it is for our understanding absolutely crucial that must be created by standardization organisations. Both, service standards and alternative standardization documents undoubtly raise the number of standards and with it the risk of incoherent and contradictionary technical rules (e. g. Standards for energy efficiency and Energy efficiency services). Fora and consortia follow in general the aim to provide certain participants with competitive advantages. Hence, trade barriers are are the results. The basic principle of consensus and transparency would be put into question.

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?

Unfortunately the German transcription is not precise. The question aims whether the legislative enactment procedure should not only integrate the so called consensus based standards but also alternative standardization documents of fora and consortia. This approach raises severe legal concerns. By the current European Standardization System the coherence of the set of European standardization specifications is effectively guaranteed. This characterizes the exceptional strength of the current system. The existence of numerous standards organisations, fora and consortia which are in direct competition with one another would definitely present a major barrier to the participation of SMEs and social partners in standardization.

Neither fair accessibility, transparency nor a well-balanced participation for SME would be garanteed with this proposal. This high number of different organisations, fora and consortia would lead to an insuperable high barrier (monetary, human resources) to participate actively within the process und would cause the risk a participation of stakeholders who are guided by partial interest. Especially fora and consortia are occasionally dominated by non-European stakeholders and it is therefore disputable whether they follow European interests. Besides, the European competition law sets high requirements to neutrality and code of practice which are solely fulfilled by national and European standardization organisations.

- 4. How could ESOs and NSOs be encouraged to accelerate their standards development process? Should for example the Community financing for standardization be subject to conditions in terms of speed of delivery whilst maintaining the openness of the process?**

The European Standardization is based on a private enterprise system. The preferably fast development of standards based on a broad consensus made by all involved stakeholders is for the European wealth and growth a main objective target and economically crucial. This well established system is widely supported by all actors involved. Finding consensus by the acceleration of monetary incentives is in our opinion not possible. The standardization bodies should be furthermore to be asked to work on the improvement of the development process. This is accomplished by a close coordination of all interested participants.

With no doubts, we see severe problems in the field of the mandating of standardization projects. The vast majority of them are highly time-consuming and circuitous processes. In this case there is an urgent need for action. Granting mandates and the work on standardization must be clearly defined by the Commission, so the standardization committees do not start a life of its own as many times observed. Under these circumstances it seems quite curious to accelerate the work by more bureaucratic requirements. The need for action rests with the Commission and not with the standardization organisations.

- 5. Should the WTO principles of transparency, openness, impartiality, consensus, efficiency, relevance and consistency be integrated in the legal framework of European standardization? How should this be implemented?**

The European Standardization Organisations as well as national members already comply with the WTO principles in any case. Therefore we do not perceive any need to integrate it in the legal framework.

- 6. How could the participation of consumer organisations, environmental NGOs, trade unions and social partners, and SMEs be best promoted? What should be the role of public authorities in supporting such a participation in a transparent, open, impartial, consensual, efficient, relevant and consistent European standardization System?**

A promotion of the participation of all stakeholders in the standardization process is a constant task of the national standards organisations and of those working actively within the field of standardization. Participation of all interested parties is a basic principle of European standards. Some organisations which are financed through tax revenues give the impression standards work puts certain groups at a disadvantage. This is a false impression and should be reconsidered. The rules of procedures of standard organisations ensure the protection of minority interests. Especially mirroring the European standardization work by committees of national standardization organisations ensure the participation of the above named groups and stakeholders. This system allows them to contribute

and work in a way which can never be achieved by a centralized structure the Commission is proposing. This approach would be misleading. Instead, further efforts must be made to integrate all interested parties into national mirror committees because time and effort by centralized European stakeholders would be immense. Additionally it can not be ensured, that representative positions will be claimed regarding the lack of an effective consultation process at their disposal in all EU Member States.

Germany already has a successful solution for representing social groups in standardization which can be used as a best-case model for other European countries: Organisations such as the DIN Consumer Council, the Commission for occupational health &

safety and standardization, the DIN Small Business Commission, the coordination office for environmental organisations working in standardization etc. gather and disseminate the opinions of the members. Agencies work closely with these organisations and help to finance them.

To encourage the participation of SMEs but also NGOs, it is much more important to reduce the number of standardization projects, so that an efficient participation can be ensured in respect of willingly experts as well as the expenses for all stakeholders in general.

- 7. How could the NSOs 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 standardization projects? 3. Promotion/sales of standards? 4. Other?**

The national standards organisations already work closely together. Thus, there is no need for European policymakers to take any action here. It would be more important if potential areas for cooperations are discussed by the addressed stakeholders at a national level.

- 8. Without prejudice to the national delegation principle, how could the European Standards Organisations (ESOs) manage directly, on a case by case basis, some standardization activities, especially some Technical Committees?**

This question is irreproducible, especially in respect of the politics which clearly demands in their implementation of directives and regulations a private sector consensus. The set-up of another European control mechanism is therefore to be rejected. It is not the European policymakers' job to lay down rules for the structures and processes of the privately run NSOs. The national delegation principle emphasized in the Council decision has been proven of good value. Constatng this, we do highlight that the European Commission should legally and politically remain within their pre-described reference frame work. BAK and BIngK would furthermore highly appreciate if already within the various legal acts specific requirements are being figured out.

- 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?**

International standardization is carried out according to the national delegation principle. Supporting participation in international standards work is however not the responsibility of the Commission, but a matter for the NSOs at national level. Thus, a support for any activities carried out by the ESOs to propagate the advantages of European standardisation in non-European countries would be welcomed. The aid and support of authorized experts e. g. by financial coverage would lead inevitably to a favourisation of this group and is therefore to be rejected. A considerable disadvantage for SMEs would be the result and standardization would turn into a theoretical construct and removed from reality. Only a broad participation of all interested groups ensures acceptance and valuation of standards. The tendency to „scientificate“ standards was repeatedly indicated and criticised because of the lack of substantial results and user friendliness. Incredibility and a lack of certainty are the results.

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?

This suggestion is adamantly rejected by BAK and BIngK as a further fragmentation of the European Standardization System would be the result. If the Commission needs support, necessary basic requirements within the European legal acts must be offered and/or the European Commission has to find a substantial consensus through the national standardization bodies with the economy.

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

In all three cases – international, European and national standards work – the most efficient participation model is to involve all stakeholders at national level. The exchange of interest and consensus-forming among national interest groups (industry, NGOs, consumers, agencies etc.) can only be efficiently carried out in national mirror committees: Within these committees the participants can work in their native language, come in contact with their suppliers, customers and members of other interested circles such as science, finance and insurance and ensure that national consensus will be formed in the most precise and relevant manner that will bring practical benefits for the subsequent application of the standard.

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

In our understanding there is no such added value. European and national standardization are not in opposition, but complement to each other. European standards are effective because they are adopted as national standards by all of the Member States, while at the same time conflicting national standards are withdrawn. This principle is a key pillar of the European Single Market. National standards projects are only carried out where there is no evident European or international interest.

13. Cost of standards

Naturally, it is understandable that all businessmen try to lower costs as much as possible. It is therefore no surprise that the idea of lowering the price of standards is favourably received. Concerning the question for alternative methods for financing standardization it quickly becomes clear that higher membership fees for participation or financing through taxes would be necessary. Free and uncomplicated access to standardization with a direct remark within the legislative provision is also one of the important aspects we wish to address.

Beyond, the sale of standards ensures that not only the active members involved in the standardization process financen the system, but is also financially supported by all stakeholders and standard users. The standards organizations currently offer better solutions for a cost-effective access to standards. The addressed reflection should be more focused on the development of alternative concepts instead of a public centered finance system. It would only be granted to a selected number of certain stakeholders. This would be followed by a fundamentally diversion for certain special interest groups and destroy the intended aim to find a broad consensus of the economy regarding standardization.

If this approach will be enforced all interested parties should be publicly funded. Realistically and concerning the public financial resources in Europe (Commission or the Member States) seems quite unlikely.

Final Conclusions

From our perspective the revision of the legal framework in Europe should neither put the basic principles of the European standardization system nor the approved and established structures in the Member States into question. Rather, it is within the system a main target to develop profound solutions and additionally addressing clearly and transparently the challenges for the standardization policy of the future. It must be also of high priority to address the special needs of SMEs within the reform ideas. All together, they participate actively in the development of setting technical standards. This effectively proven way has for our understanding to continue.

1. It would be a highly appreciated by a vast number of SME to promote, advance and create a limited number of basic standards which can be further improved and if necessary conduct corrections. In many cases the canon "More is less" might also help to apply standards properly and easily than the inflationary development of standards projects. Standardization must reflect the state of the technology and not the State of research where substantiated results are still missing. The state of research and science may never set the basis for standards. Only the state of technology can provide a practical application for the end user. It is therefore crucial to limit standardization to a minimum and its essential function to promote competitiveness, provide specifications for the benefit of all market players and to ensure high architectural quality.

2. Subsidiarity as a main principle of the EU means in the field of standardization to display levels which are suitable and capable to administrate the coordination and the formation of opinion. By the national delegation principle the European standardization system this claim is perfectly embedded: The decentralized organisation of the European standardization work enables also representatives of SMEs to participate in the European standard development. Without language barriers professionals of SMEs can use "mirror committees" at national level to contribute with their expertise and technical knowledge directly to the standardization process. In Germany, more than 28 000 experts work actively within in the bodies of the DIN. The elimination of national platforms for instance would directly lead to the result that European standards meet less and less national requirements and cause considerable legal uncertainty for the majority of the economic actors.

3. In the context of the convergence program FLES3 the process of a close cooperation of the European standardization organisations among each other, for instance by harmonization and alignment processes, the joint use of infrastructure and personnel – e. g. merger of the General Secretariats of CEN and CENELEC - should be pursued consistently.

In view of the existing fora or consortia in some industry sectors in which specifications with global relevance and influence outside of the traditional Standardization processes are developed the European standardization system must develop better ways and mechanisms of interaction. In any case, an uncontrollable competition between the European standardization organisations, forums and consortia have to be avoided, otherwise a fragmentation and inconsistency the European standardization will take place. Needs of SMEs and social groups could not be considered sufficiently. In our opinion standardization organisations are the most adequate bodies to participate within fora and consortia. Therefore, the Commission should focus on how a suspected fragmentation by fora and consortia can be avoided and its clear commitment to be involved within the standardization structures. The formal process of standardization, in which the principles of openness, participation, transparency and coherence finds full attention and of a consensus between all national positions and interested circles must remain the first choice and must be further developed.

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