

Joint position of the BDI, BITKOM, DIN and DKE on ICT aspects in the context of the review of the European Standardisation System

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Introduction

1. In this paper the BDI (Federation of German Industries), BITKOM (German Federal Association for Information Technology, Telecommunications and New Media), DIN (German Institute for Standardisation) and DKE (German Commission for Electrical, Electronic & Information Technologies of DIN and VDE) present their joint position on aspects of the modernisation of ICT standardisation in the EU being discussed within the context of the current review of the European Standardisation System (ESS).
2. At present, the ESS and its processes are primarily defined in three legal acts:
 - I. Directive 98/34/EC, which lays down a procedure for providing information, in the field of technical standards and regulations, among the European Commission, the EU Member States, the European Standards Organisations and the National Standards Organisations;
 - II. Council Decision 87/95/EEC, which lays down provisions relating specifically to the ICT field for promoting the implementation and application of ICT standards and specifications, thus sustainably furthering interoperability;
 - III. Decision No. 1673/2006/EC of the European Parliament and of the Council on the financing of European standardisation.
3. The ESS is based on the three main pillars CEN, CENELEC and ETSI (the European Standardisation Organisations, referred to below as "ESOs"): CEN is the European Committee for Standardisation, CENELEC is the European Committee for Electrotechnical Standardisation and ETSI is the European Telecommunications Standards Institute.
4. In its ICT White Paper (COM(2009) 324)¹ the European Commission presents suggestions for the modernisation of ICT standardisation in the EU. These suggestions are based on the ICT study carried out in 2006/2007 and on the intensive dialogue between the Commission and the ICT Steering Committee, in which all groups and organisations involved in European ICT standardisation are represented. ICT-specific aspects are also dealt with in the EXPRESS Report, which makes recommendations for implementation². The European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) has also published a report on the future of European standardisation which explicitly addresses the Commission's ICT White Paper, giving recommendations on how the Commission, the Member States and the European Standardisation Organisations can implement the suggestions made in the ICT White Paper³.

¹ Available at http://ec.europa.eu/enterprise/newsroom/cf/itemlongdetail.cfm?item_id=3263&tpa_id=133&lang=en

² Available at <http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/policy-review/express/>

³ Available at <http://www.europarl.europa.eu/activities/committees/reportsCom.do;jsessionid=F051A0317DD7BEA32D18B0DEEC4804DE.node1?language=DE&body=IMCO>

5. This position paper addresses in detail the suggestions made by the European Commission for the ICT sector. It also addresses the way in which the ICT White Paper's suggested referencing of specific fora and consortia specifications for the purposes of public procurement and in policies that are not relevant to legislation⁴ (suggestion (h) in the ICT White Paper) can be implemented while at the same time ensuring that the basic requirements laid down in item 19 of this position paper are met.

The European Standardisation System (ESS) has proven successful

6. The ESS has proven to be extremely successful. It efficiently and effectively regulates the development of standards (in particular also harmonised standards) for Europe, thus contributing greatly to the common European market. There is therefore no need to make any major changes to the current ESS.
7. The ESS should be strengthened by the review currently underway. The underlying principles of the ESS are transparency, openness, the appropriate representation of interests, the coherence of the standards collection, an open public enquiry procedure in the language of each Member State, and adherence to the principles of the WTO Agreement on Technical Barriers to Trade.
8. These principles should be strictly applied during the current review of the ESS as well.

Need for modernisation in the ICT sector

9. In the ICT sector new structures for drawing up specifications have developed at global level in parallel with those used by the formally recognised standardisation organisations. Over the past 10 to 15 years some fora and consortia have grown into global organisations who lay down ICT specifications that are used and implemented globally, the most prominent examples being OASIS and W3C; these organisations operate according to open and transparent processes and are made up of a broad spectrum of international members from all areas, including, for example, SMEs, governments and NGOs.
10. The specifications of these fora and consortia are of great importance for the ICT sector. Many are implemented and used worldwide and have proven successful in terms of quality and interoperability. **The fact is, without the contribution of these specifications no ICT infrastructure would be realizable.** This situation in global standardisation must be taken into account.
11. Today, the public sector cannot make direct use of ICT specifications developed by fora and consortia. Public policies and public procurement can only make direct reference to standards and specifications that have been developed or adopted by the formally recognised standards organisations. Nevertheless, specifications of fora and consortia are also of great relevance for industrial and innovation policy, as well as for public procurement.
12. In formal standardisation, processes for transposing recognised documents into standards have been successfully introduced, for example the PAS or fast-track procedure at international level, or the UAP (Unique Acceptance Procedure) at European level (in the following text these procedures are referred to collectively as "fast-track procedures"). However, these processes with which fora and consortia can introduce their specifications into standardisation are not currently being used by all fora and consortia who

⁴ The position given here does not relate to the New Legislative Framework according to which harmonised standards give detail to New Approach Directives (e.g. Low Voltage Directive, General Product Safety Directive) whereby compliance with such standards allows a presumption of conformity with the respective directives.

come into question. Furthermore, there are specifications drawn up by the ESOs at European level (e.g. CEN and CENELEC Workshop Agreements) to which the Commission can also make reference.

13. Where cooperation between fora and consortia with the formal standards organisations is not currently taking place for various reasons, work should preferably be made towards improving this cooperation and for improving the processes with which the ESOs can adopt the specifications of suitable fora and consortia. In particular, the responsibility for the maintenance and revision of the relevant specifications, access rights, licensing terms as regards distribution rights and any restrictions of use need to be clarified.
14. In addition, and **only for the ICT sector**, there is a proposal to allow direct referencing in public procurement or policy documents (that are not relevant to the legislation) of certain specifications of fora and consortia when there is a clear need, provided the basic requirements laid down in item 19 are met.
15. This does explicitly not apply to specifications of fora and consortia that are relevant to legislation, i.e. in connection with the New Approach and the New Legislative Framework.

The Commission's suggestions for the modernisation of ICT standardisation

16. In addition to suggestions regarding research policy and intellectual property rights, the White Paper describes five measures:
 - I. The introduction of a list of attributes, the "attributes of eligibility";
 - II. The possibility of making reference to certain specifications of fora and consortia in EU legislation and policies, subject to a positive evaluation of the specification in question with regard to the above-mentioned list of attributes;
 - III. The promotion of better cooperation between fora and consortia and the ESOs on the basis of a process that would lead to the publication of standards by the ESOs;
 - IV. The establishment of an "ICT Standardisation Policy Platform" in which the Commission and the Member States can discuss matters in their respective responsibility while also allowing discussion with a wide circle of stakeholders from standards organisations, fora and consortia, industry, SMEs, consumers, etc. This platform should provide the Commission with expert advice on all matters concerning European ICT standardisation policy and its effective implementation;
 - V. The transformation of the ICTSB into an "operative group" to improve the cooperation between formal standardisation and fora and consortia.
17. It is generally understood that these suggestions only apply to the ICT sector, in which there is an urgent need for such improvements. These suggestions should not be applied to other areas because these are appropriately served by current processes within the ESS.

Basic requirements for the modernisation of ICT standardisation from the point of view of the BDI, BITKOM, DIN and DKE

18. Priority must be given to strengthen the cooperation of the ESOs with fora and consortia. Fora and consortia should find ways of introducing their specifications in the ESOs, especially where political legitimacy is needed. The ESOs on their part should make it easier for the fora and consortia to do so, i.e. they should foster the current "fast track procedures" and improve this process. This can also be achieved by introducing suitable specifications at international level at ISO and IEC and by transferring them to European level under the Vienna and Dresden Agreements.
19. The direct referencing of certain specifications of fora and consortia in the ICT sector must be subject to the following basic requirements:
 - I. The collection of European Standards must remain coherent. Coherence must be a main attribute for assessing the specifications of fora and consortia;
 - II. It must be made clear that there is a difference in the legitimacy of a specification (issued by a forum or consortium) and that of a standard (developed by a formal standards organisation);
 - III. Compliance with competition law must be ensured.
20. The suggestions made in the White Paper for the ICT sector need to be given more detail regarding their implementation, especially in terms of the way in which the recommended referencing to certain specifications of fora and consortia in policies and public procurement (suggestion (h) in the White Paper) can be made while complying with the basic requirements laid down in item 19 above. The following requirements are to be met:
 - I. **Overall responsibility:** Legitimizing the referencing of certain specifications of fora and consortia in public policies and for public procurement (referred to below as "LEGITIMATION") is to be considered above all as a legal measure. As such, the overall responsibility for this should be with the Commission itself. Within its intended scope the "ICT Standardisation Policy Platform" should have an advisory function (see suggestion (j) in the White Paper);
 - II. **A clear orientation towards need:** A process of LEGITIMATION is only to be used on an as-needed, case-by-case-basis for selected specifications. It should in no case be used for the general recognition of the entire specification portfolio of the forum or consortium in question. A check should also be made to see if the relevant specification should be transposed into a European Standard;
 - III. **Process of LEGITIMATION:** It must be determined that the specification
 - i. meets the "attributes of eligibility" recommended in the ICT White Paper;
 - ii. fulfils the criteria of coherence with the collection of European Standards;
 - iii. is appropriately disseminated and accepted on the market.A positive evaluation with regard to the above requirements is the basis for LEGITIMATION;
 - IV. **The role of the ESOs:** The ESOs are to take on an advisory function in their role as members of the "ICT Standardisation Policy Platform";
 - V. **Transparency:** A process of LEGITIMATION must be transparent so that at any time it is evident to any stakeholder which specifications are being/have

been evaluated;

- VI. **National notification:** A process of LEGITIMATION should include a national notification level so that the specifications of fora and consortia which have been evaluated can be announced by a body at national level (to be appointed);
- VII. **Opportunity for submitting comments:** A process of LEGITIMATION must involve a public enquiry procedure so that comments can be submitted which are to be considered in an appropriate manner during subsequent procedures;
- VIII. **A clear and legally sound decision-making structure:** A process of LEGITIMATION is to be based on a clear, legally sound decision-making structure;
- IX. **Compliance with competition law:** It shall be ensured that a process of LEGITIMATION, including the list of attributes to be used, complies with competition law.