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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

The annual Union work programme for European standardisation for 2016

{SWD(2015) 301 final}

1. INTRODUCTION

European standardisation is the cornerstone of the functioning of the internal market. The positive effects of standardisation are well known and recognised. It is a key action of the Single Market Strategy¹ and is also part of several other policy initiatives, including the Industrial Policy² and the Digital Single Market Strategy³.

The Commission set its strategic vision for European standardisation in the Commission Communication for standards⁴ and set out the legal framework in the Regulation on European standardisation⁵ (hereinafter referred to as "**the Regulation**"), that has been in force since 1 January 2013.

One of the novelties of the Regulation is the obligation for the Commission to adopt an **annual Union work programme for European standardisation**, identifying strategic priorities for European standardisation reflecting the policy objectives set by the Commission in its own planning.

The annual Union work programme (AUWP) is a tool to improve the cooperation between the Commission and the European standardisation system (ESS) by setting out the Commission's vision and plans for the following year as regards standardisation: actions are proposed to ESS actors in this context.

As highlighted in the Single Market Strategy, standardisation is crucial to support efficiently the Commission's priorities in particular to: create growth for our economy and jobs for our citizens, enhance the connected digital market, form a resilient energy Union and further improve the internal market with a strengthened industrial base, the EU being a stronger global actor and the negotiator of a reasonable and balanced EU-US trade agreement.

For standardisation to properly support these priorities in the coming years, alongside the regular requests for standard setting, the Commission intends to revisit its partnership with the ESS to ensure that it suitably meets the involvement needs of all stakeholders (industry, SMEs, consumers, environmental organisations, workers...).

In 2015, the Commission concluded a number of important assessment and evaluation activities regarding the standardisation framework. Therefore, for 2016 the AUWP starts by giving account of the results of the various activities and measures to improve the implementation of the Regulation (section 2). Then it reports on the planned 2016 standardisation requests indicating their contribution to achieving the Commission's policy priorities (section 3): the detailed requests are then listed in the annex. Finally, it covers and updates the content of a number of important topics resulting from the Regulation and already present in previous AUWPs such as inclusiveness, international cooperation, IPR and research, financial and operational issues. In those areas, the Commission identifies also certain points on which a higher degree of involvement of other members of the European standardisation community would be needed.

The orientations indicated in the work programme do not have a budgetary impact over and above what is already foreseen for the year 2016.

¹ COM(2015)550

² COM(2010)614 and COM(2012)582

³ COM(2015)192

⁴ COM(2011)311

⁵ Regulation (EU) No 1025/2012

2. IMPLEMENTATION OF THE REGULATION

2.1. Article 24 of the Regulation

Article 24(3) of the Regulation stipulates that by 31 December 2015 and every five years thereafter, the Commission shall present a report to the European Parliament and to the Council on the implementation of this Regulation.

The Commission has in particular to take into account that Article 24 of the Regulation foresees a number of reports that the ESOs and European stakeholder organisations receiving funding have to submit in order to ensure transparency and increased participation of the wide standardisation community.

On the basis of the report called by Art. 24(3), the Commission will make an assessment of potential new measures to simplify the financing of European standardisation and to reduce the administrative burden for the European Standardisation Organisations.

2.1.1. Independent Review of the European Standardisation System (ESS)⁶

Furthermore, action 29 of the Communication for standards⁴, requested the Commission to undertake an 'Independent Review of the European Standardisation System (ESS)', that was tasked to an external independent consultant (Ernst & Young, E&Y). The overall purpose of the Independent Review is to measure and assess if the five strategic objectives of this Communication are being achieved (speed of the process, tool for competitiveness, support EU policies, inclusiveness of societal stakeholders and global impact) to evaluate the performance of the ESS and to formulate recommendations to improve the current system.

The results of the Independent Review were publicly discussed and disclosed: the outcome of the discussions will be taken into account in the report of the Article 24 of the Regulation.

2.2. A Joint initiative on Standardisation

The Single Market Strategy foresees for the modernisation of the standardisation system that the Commission will propose and agree a 'Joint initiative on Standardisation' with the European standardisation community. The public and private partners to the Joint initiative will take a joint commitment on what results to deliver when and how in support of the priorities of the President Juncker Commission. The Commission will address issues such as priority areas for standard development (ICT, services, energy, mobility, etc.), novel and collaborative ways of establishing standards, transparent and inclusive processes for adopting standards, coherent and strong public sector support throughout the standardisation process, enhanced knowledge management throughout the standardisation process, a joint strategy on making Europe a global standardisation hub and address issues arising from market fragmentation in field of services and servitisation. Furthermore the Joint initiative will link research and innovation priorities to the standardisation process to enable a timely start of standardisation activities. The Joint initiative should be concluded in the first half of 2016.

⁶ <http://ec.europa.eu/DocsRoom/documents/12202/attachments/1/translations/en/renditions/native>

2.3. Vademecum on European Standardisation

The Commission revised in 2015 the Vademecum on European standardisation in order to align with the reforms brought by the Regulation and the Communication for standards⁴.

The Vademecum also sets guidelines for the European Standardisation Organisations (ESOs) to ensure appropriate transparency and inclusiveness during execution of Commission requests.

The Commission invites the ESOs to train their technical bodies in applying these new guidelines to ensure practical implementation of these guidelines in particular when developing and revising harmonised standards.

3. STRATEGIC PRIORITIES FOR EUROPEAN STANDARDISATION

3.1. ICT Standardisation

The Communication on the Digital Single Market (DSM) Strategy of 6 May 2015 includes the adoption of a “Priority ICT Standards Plan” to identify and define key priorities for ICT standardisation with a focus on the technologies and domains that are deemed to be critical to the Digital Single Market, including essential sectoral interoperability and standards. The Plan will be adopted in the first half of 2016.

The Priority ICT Standards Plan will complement the Annual Union Work Programme.

Timely ICT standardisation actions are expected to reduce market fragmentation by increasing interoperability of products, systems and services and therefore contributing to the competitiveness of European firms of all sizes, including SMEs.

Leveraging the single market can ease access to global markets by promoting European developed standards worldwide as shown with the GSM, Digital Video Broadcasting and other success cases.

As indicated in the DSM communication an increased effort is needed to ensure that standardisation deliverables keep pace with changes in technologies.

The next step for ICT standardisation will be to:

- Find an efficient and effective way to identify the sectors and technologies that are critical for the DSM and
- Select key priority ICT standardisation actions that are needed in those sectors and technologies.

To achieve this, the Commission is acting and has launched consultations with stakeholders.

Several already existing instruments will support this approach. The Rolling Plan for ICT Standardisation is a work programme that is arranged by topic, linking EU policies to standardisation activities. It is established in collaboration with the European Multi-Stakeholder Platform on ICT, which includes both European and worldwide standardisation stakeholders, and represents a comprehensive and accurate situation of ICT standardisation.

The ICT standardisation Rolling plan is consistent with this annual Union work programme and is published yearly on the website of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs⁷.

3.2. Services Standardisation

Unlike goods and ICT, the development of services standards has been limited especially at the EU level. As a result, service standards account for only 2% of all European standards.

There is however potential for greater use of European service standards. Voluntary service standards could help tap the unexploited potential of the services sector for the EU economy by improving the performance and quality of the services, ensuring interoperability and facilitating cooperation between economic operators.

The importance of European services standards is also likely to increase in the coming years as the line between goods and services blurs (servitisation). In such cases, a restriction to the provision of either the good or the service in practice becomes a restriction to the sale of the whole. To prevent this restriction, European service standards could be needed to complement the goods standards.

In addition, as the overall number of national service standards increase and mandatory certification requirements differ between countries, European service providers face growing barriers. The greater use of European service standards could help companies operate in a foreign market in cases when national certificates are required within authorisation or licensing procedures.

There are challenges though to developing European service standards, such as ensuring the adequate representation and buy-in of stakeholders such as SMEs, social and societal actors.

Further, the needs of the service sectors vary widely and measuring performance of services is different from goods.

Unlike for goods, the EU legislation for services is rarely sector-specific and it does not on a regular basis refer to standards as tools to get presumption of conformity. Service standards should remain purely voluntary and based on market demand, and as stated in the Single Market strategy, the Commission will provide guidance on issues linked to service standards, thereby raising awareness of the specificities of services standards and identifying ways forward to support their use. The approach set out in the guidance will also be used for AUWPs in future years.

3.3. Strategic priority fields for 2016

The Commission has identified its strategic priorities for European standardisation in the below listed fields where it intends to ask from the European standardisation organisations the development of standards. The fields are directly linked to the following Commission's priorities: Connected Digital Single Market; Resilient Energy Union with a Forward-Looking Climate Change Policy; Deeper and Fairer Internal Market with a Strengthened Industrial Base.

In the Connected Digital Single Market, the proposed actions aim at enhancing the use of digital technologies and online services covering different sectors of economy and of the public sector:

⁷ http://ec.europa.eu/growth/sectors/digital-economy/ict-standardisation/index_en.htm

- information systems for transport aiming to facilitate the flow, access and use of information in transport, in order to enhance efficiency and reduce costs of transport operations
- Common Information Sharing Environment for the surveillance of the EU maritime domain seeking to enhance automatic information sharing between the national authorities involved in maritime surveillance, including defence
- labelling and marking schemes suitable for eCommerce
- charger for mobile phones and other portable devices
- eHealth for supporting patients' rights in cross-border healthcare
- Galileo Timing Service and the Galileo Search and Rescue Return Link Service: allowing user receiver components to obtain precise timing products.
- location authentication from Galileo
- accessibility of public sector bodies' websites
- access to in-vehicle data

As it concerns the Resilient Energy Union with a Forward-Looking Climate Change Policy, the proposed actions aim at combining our infrastructures, diversifying our energy resources, reducing energy consumption and promoting climate-friendly technologies:

- enabling a broader uptake of alternative, climate-friendly technologies
- Green Infrastructure aiming to support public procurement and overall stimulate the market for it
- Ecodesign on taps, showers products, televisions, smart appliances, machine tools, welding equipment and energy labelling
- deployment of alternative fuels infrastructure and simplification of the information to users on the compatibility of their vehicles with the fuels or electricity re-charging points
- monitoring of mercury and formaldehyde emissions

In supporting the Deeper and Fairer Internal Market with a Strengthened Industrial Base, the Commission proposes a number of actions increasing safety and interoperability requirements which are necessary to the completion of the internal market in products as of to the maintenance of a high performing industrial base in Europe:

- home compostable plastic packaging
- modelling technique can be used to assess the air quality
- methodology for source identification and quantification of air pollution
- improved security and compliance of software defined radio
- personal protective equipment (protective clothing)
- cableway installations
- appliances burning gaseous fuels
- consumer products covered by the General Product Safety Directive (e.g. candles, barbecues, children shoes, pushchairs).
- interoperability of case management systems in charge of supporting out-of-court (alternative) dispute resolution cases
- on materials and articles intended to come into contact with food
- construction products and introduction of thresholds/classes of performance for construction products
- interoperability of rail technical specifications

4. INCLUSIVENESS

In the past two years, great effort has been made to allow SMEs, societal and social stakeholders to effectively take part to the standardisation activities. In accordance with the provisions of the Regulation on financing of European stakeholder organisations⁸, , the Commission has formalised, following open calls for proposals, the partnerships with the Annex III organisations (SBS⁹, ANEC¹⁰, ECOS¹¹ and ETUC¹², representing respectively SMEs, consumers, workers and environmental interests in standardisation), achieving coherence, and stability in terms of financing and management, as well as continuity of representation of stakeholders interests in the four areas identified by the Regulation.

As shown by the Independent Review, there are still challenges to be dealt with, in order to ensure adequate participation for Annex III organisations. First, there is still a lack of awareness and recognition of Annex III organisations and their role in the European Standardisation System. Second, stakeholders organisations are still encountering difficulties in accessing relevant documents, necessary to carry out the technical work. Third, the interaction with the National Standardisation Bodies is not always sufficient to guarantee them a useful support. Fourth, Annex III organisations still find difficulties in dealing with the different working procedures of the various working groups, which often adds unnecessary administrative burden to the technical work.

In 2016, the Commission will closely monitor further progress in the implementation of the provisions of the Regulation and to increase the inclusiveness of the European standardisation system.

The Commission invites ESOs, National Standardisation Bodies and Annex III stakeholder organisations to take actions to address the above identified challenges and further intensify their cooperation. Moreover, the Commission invites the ESOs to continue and to strengthen their efforts to facilitate the work of Annex III organisations by adapting internal rules and procedures as notably recommended by the Independent Review with specific attention to the work carried out at international level.

5. INTERNATIONAL COOPERATION

The Commission invites the ESOs to continue the joint promotion of international and European standards in those world regions where the European industry can benefit from strengthened standardisation relations and easier market access.

To achieve also better acceptance of European initiatives at international level the ESS should manage to speak with one voice in the appropriate bodies.

Towards third countries the Commission will continue the various existing policy dialogues, visibility and awareness actions (Seconded European Standardisation Expert in India, SESEI, Seconded European Standardisation Expert in China, SESEC,

⁸ Art. 16 and 17 of Regulation (EU) No 1025/2012, Annex III to the Regulation (EU) No 1025/2012

⁹ Small Business Standards <http://sbs-sme.eu/>

¹⁰ The European consumer voice in standardisation <http://www.anec.eu/anec.asp>

¹¹ The European Environmental Citizens' Organisation for Standardisation <http://ecostandard.org/>

¹² The European Trade Union Confederation <http://www.etuc.org/>

or China Europe Standardisation Information Platform, CESIP) for which the ESOs' support is fundamental (see the yearly Operating Grants).

The benchmark for the joint work is the current cooperation and information exchange vis-à-vis the United States.

The Commission, already technically contributing to some international standardisation work, expects to be more involved in European and international standardisation, to realise the full potential of its existing formal observer-status, in order to better implement its commitment to the primacy of international standards.

6. IPR AND RESEARCH TOPICS

6.1. IPR in standardisation

IPR and standardisation are closely interrelated, although being fundamentally different. Ownership, patents, copyright and related Intellectual Property Rights (IPR) policies play an increasingly significant role in standardisation. This is evident in the ICT area, but may affect other sectors as they are affected by interoperability modalities. In this context, patents in particular will play an increasing role in all fields where patentable solutions will add substantial value to the standards.

In Case C-170/13¹³, the European Court of Justice (ECJ) mainly specifies a process, with mandatory steps for either side (patent holder and implementer) to either bring or prevent an injunction.

The standard essential patent (SEP) holder must (before bringing an injunction):

- first, alert the alleged infringer of the infringement complained about by designating that patent and specifying the way in which it has been infringed, and,
- secondly, after the alleged infringer has expressed its willingness to conclude a licensing agreement on "Fair, Reasonable and Non Discriminatory" (FRAND) terms, present to that infringer a specific, written offer for a licence on such terms, specifying, in particular, the royalty and the way in which it is to be calculated.

In reaction to the SEP holder's offer on FRAND terms, in order to successfully bring an antitrust defence against the injunction, the alleged infringer must diligently respond to that offer, in accordance with recognised commercial practices in the field and in good faith, this being a matter which must be established on the basis of objective factors and which implies, in particular, that there are no delaying tactics. Should the alleged infringer not accept the offer made, it must submit to the proprietor of the (SEP) in question, promptly and in writing, a specific counter-offer that corresponds to FRAND terms.

Furthermore, where the alleged infringer is using the teachings of the SEP before a licensing agreement has been concluded, it is for that alleged infringer, from the point at which its counter-offer is rejected, to provide appropriate security, in accordance with recognised commercial practices in the field, for example by providing a bank guarantee or by placing the amounts necessary on deposit. The calculation of that security must include, inter alia, the number of the past acts of use of the SEP, and the alleged infringer must be able to render an account in respect of those acts of use.

¹³ Case C-170/13, REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Düsseldorf (Germany), made by decision of 21 March 2013, received at the Court on 5 April 2013, in the proceedings, Huawei Technologies Co. Ltd versus ZTE Corp., ZTE Deutschland GmbH

In addition, where no agreement is reached on the details of the FRAND terms following the counter-offer by the alleged infringer, the parties may, by common agreement, request that the amount of the royalty be determined by an independent third party, by decision without delay.

Finally, an alleged infringer cannot be criticised either for challenging, in parallel to the negotiations relating to the grant of licences, the validity of those patents and/or the essential nature of those patents to the standard in which they are included and/or their actual use, or for reserving the right to do so in the future.¹⁴

There is a common understanding that increasing transparency and the quality of the patent declarations will improve the current framework.

ESOs should continue to improve their IPR policies and achieve a fair balance between the interests of technology owners and those of technology users.

Potential changes in the IPR framework would need to be carefully studied and extensively tested with all stakeholders.

6.2. Horizon 2020 – Research and Innovation

The development and implementation of research and innovation agendas including through standardisation is essential in addressing competitiveness. Horizon 2020 will give strong support to the market uptake of innovation, in particular to supporting standardisation through research and putting science into standards. Standardisation activities are an essential channel for the market adoption of research results and for the diffusion of innovations including research results from the Euratom part of Horizon 2020.

ESOs should encourage and facilitate appropriate representation, at technical level, in standardisation activities of legal entities participating in a project that is related to that area and that is funded by the Union under a multiannual framework programme for activities in the area of research, innovation and technological development.

7. OPERATIONAL AND FINANCIAL FRAMEWORK

7.1. New methodology for operating grants

The Commission developed a methodology for sharing the budget between operating and action grants. The repartition of the annual budget for European standardisation for operating grants to each European standardisation organisation is as follows:

- for the European Committee for Standardisation (CEN) a maximum 53,64% of the annual budget for operating grants;
- for the European Committee for Electrotechnical Standardisation (Cenelec) a maximum 9,23% of the annual budget for operating grants and;
- for the European Telecommunications Standards Institute (ETSI) a maximum 37,13% of the annual budget for operating grants.

7.2. Compliance assessment of standards with Union legislation and policies

The Commission endeavours to harmonise the tasks and strengthen the independency of the experts employed for assessing compliance of requested deliverables with the Commission requests (like “New Approach Consultants” currently managed by CEN

¹⁴The above applies to injunctions, not to actions for damages/opening of accounts.

and CENELEC) in order to provide for continuous and long-term availability of such assessment service. Various scenarios will be tested in order to find optimal solutions for the management of such service on the basis of actual needs, including an informal ad-hoc mediation.

7.3. Pending mandates

The Commission will examine which of the mandates issued before the entry into force of the Regulation are still valid.

The Commission invites ESOs to report on the on-going work under the mandates issued before the enforcement of the Regulation. The Commission will decide which of these overdue mandates should be maintained.