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Europe Must Maintain Industry Know-How For Its Standardisation System to Succeed

Standards are unarguably one of the key drivers for frictionless trade, both across Europe and internationally, while also ensuring consumer safety. They have a dual function in demonstrating compliance with EU legislation and facilitating access to markets.

The increase of new legislation over the past years, especially in the context of the green and digital transition, has garnered greater public and political attention on the role standards play in achieving policy goals, ranging from the regulation of Artificial Intelligence to achieving the Net Zero economy. Realising the ambitions of these various pieces of legislation will require that advanced technology is available and deployed as soon as possible. To achieve this goal, the European Standardisation System (ESS) must function efficiently and continue to foster the public-private partnership which is integral to making standards work and bringing the best knowledge to the table.

Unfortunately, industry is convinced that the ESS is currently under threat and desperately sees the need for common ground and understanding of standardisation to be restored. Our confidence in the entire system has been shaken because of the increasing 'judicialisation' of standardisation and subsequent policy changes enacted as a result. This concern over the future of standardisation in Europe is exacerbated by the direction the Advocate General (AG) has taken in [the opinion](#) on Case C-588/21 'Public.Resource.Org, Inc. and Right to Know CLG v European Commission' According to the AG, harmonised European Standards (hENs) must be made freely available without charge, and should not benefit from copyright protection, thus reinforcing the interpretation that EU standards are law.

While the opinion is non-binding and we await the final judgement, we would like to provide some general expectations of potential consequences an endorsement of the Opinion by the European Court of Justice would imply.

- **Pushing out Industry 'know-how'** - As a result of recent changes in standardisation policies, industry is becoming less interested in developing hENs. However, without industry – which bears the majority of the cost of standards development¹ - no state-of-the-art knowledge would be brought to the table and no standard would find success in the market, ultimately leaving the consumer to suffer. If confirmed by the court, the AG's Opinion would contribute to further decreasing incentives for companies to participate in the ESS. This in turn may hinder the introduction of innovative solutions.
- **Decoupling from International Standards** - One of the core incentives for business participation in the ESS is that there is alignment between international standardisation efforts and European standards. The AG Opinion creates a grey area for the incorporation of ISO and IEC standards into hENs since ISO and IEC standards are copyrighted materials. Furthermore, it would jeopardise CEN/CENELEC's ability to comply with their ISO/IEC duties to protect copyrighted material.

¹ According to an estimation of the ESOs, the industry experts alone spend around EUR 1 billion each year to participate in and contribute to voluntary standardisation work' – Report From the Commission to the European Parliament and the Council on the Implementation of the Regulation (EU) No 1025/2012 from 2013 to 2015.

- **Undermining the ‘New Approach’**- The New Approach is based on the principle that regulation defines only essential requirements and leaves the development of technical details to the European Standardisation Organisations which incorporate ISO/IEC documents. Since the rulings on James Elliott and other cases, the Commission has taken an increasingly interventionist role in European standardisation, which has resulted in significant delays in the development of standards and is threatening their technical quality. The endorsement of the AG Opinion stating hENs are generally EU law in addition to Article 267 TFEU will further formalise the current counterproductive direction.

Overall, we believe this opinion reinforces a dangerous course and could lead to serious destabilisation of the ESS and the internal market more generally. The EU has a highly successful model for mobilising industry know-how in implementing its product safety legislation to protect consumers and the environment, advance its global competitiveness, and generate welfare for its citizens. It should take the utmost care not to terminally damage this model.