

**Brussels, 13 July 2011**

## **European standards: a useful tool for both the EU and companies, which deserves support with less bureaucracy**

Comments on the Commission Communication “A strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020” and Proposal for a Regulation of the European Parliament and of the Council on European Standardisation and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and of the Council (01/06/2011).

### **EXECUTIVE SUMMARY**

Orgalime is a strong supporter of the ‘New Approach’ for the marketing of products and has therefore welcomed the role that standards play as a support for companies to comply with their obligations under harmonised EU legislation. At the same time, European standards have always fulfilled their primary function, that is to meet the daily business needs of companies for supplying products and services to the market, both in the EU and worldwide.

Therefore, Orgalime expects that any review of the tried and tested European standardisation system which has underpinned the global development and competitiveness of our industry, the largest manufacturing sector in Europe, should aim to enhance and to support the crucial role that standards bring.

In the present position, which is a first analysis of the proposals, Orgalime focuses on the essential issues with a view to alerting regulators to the importance of not compromising the success of the European standardisation system (ESS) which contributes to develop a very wide range of different standards which are critical to companies in their markets.

While there are certain points where we see a progress in this direction, Orgalime has profound concerns about the Commission strategic vision, which in our view focuses on enhancing standards as a regulatory tool at the expense of their role as a market tool. We feel that there is a confusion of roles in the proposals, with standardisers expected to step into the shoes of legislators with “societal stakeholders” given a similar role.

Introducing under the banner of “transparency of standards” the requirement to establish an “appropriate representation” of stakeholders by categories appears unnecessarily bureaucratic and may end up as counterproductive and a deterrent to the voluntary participation of businesses.

Moreover we believe that transparency is also required of the institutions with Commission draft mandates being open to the scrutiny of relevant European stakeholders. Beyond organisations financially supported by the European Commission, this consultation should include relevant trade and industry federations in a meaningful process as foreseen in Article 1 paragraph 2 of the Treaty on the European Union ([OJEU C83/21 of 30/03/2010](#)).

*Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies, 90% of them are SMEs, in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 9.7 million people in the EU and in 2010 accounted for some €1,510 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.*

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In our view then, standards can further support the Commission's ambition to meet economic, environmental and societal challenges, provided that their role is not confused with that of legislation. European standardisation should be kept free from bureaucratic control and should operate close to the market, and therefore stay anchored in the national delegation principle. Moreover, the ESS will only improve in speed and efficiency if it stays attractive to the primary users of standards, that is the companies that overwhelmingly contribute to it both through the expertise they provide and their funding (95% of the costs of European standardisation).

## GENERAL COMMENTS

Orgalime welcomes the recognition by the Commission of the importance of standardisation to ensure market access both in Europe and globally, for products and for services. Orgalime also supports the vision that European standards should help to enhance and accelerate the sustainable growth of the European economy by 2020, as stated in the Commission Communication.

The Commission rightfully underlines how instrumental harmonised standards are to the success of its New Approach-type legislation, now codified in Decision 768/2008/EC (Common New Legislative Framework for the marketing of products): once published in the OJEU, they provide presumption of conformity to essential requirements of EU internal market directives. Orgalime always supported the extension of this approach, which is helpful to companies for complying more simply with an increasingly complex body of EU legislation, not only for the protection of the safety of consumers and workers, but also for the protection of the climate and the environment. When discussing standardisation and societal interests, attention should be drawn to the fact that standards are made for many different purposes and cover many different interests and aspects.

Therefore, it is in our view essential to keep the strengths of the existing system, such as the national delegation principle, and the fact that standards are developed in a transparent way, driven by the market needs, within a formal, but privately organised system, in compliance with the WTO principles that prevent barriers to trade. This is especially important in order to ensure a coherent set of non-conflicting standards and to avoid duplication of work in different fora.

Unfortunately, Orgalime has profound concerns about **the overall approach of the Commission which in our view entails a risk for the attractiveness of the ESS to its primary users and funders, i.e. companies**, for the following reasons:

1. **Standards are primarily a market tool, not a regulatory instrument:** standards serve a purpose other than legislation and should therefore remain, a voluntary compliance instrument for market operators. They are a useful reference for enforcement authorities in the framework of the New Legislative Framework (Regulation 765/2008/EC and Decision 768/2008/EC). Therefore Orgalime supports strengthening this coherent approach and extending its scope to support meeting challenges such as climate change, sustainable resource use, ageing etc. (*Whereas 12*), as long as the distinction between legislation and standards does not become blurred. It is indeed essential also to remember that only 20% of standards support European legislation and policies.
2. **Standardisers cannot step into the shoes of legislators:** the balancing of interests between different stakeholders is, and should stay, the primary responsibility of legislators and should not be shifted to standardisers. The job of standardisers is mostly of a technical nature to respond as efficiently and quickly as possible to business needs for measurement, interoperability, type-reduction, etc... Hence, we disagree with the Commission's drive to put pressure on standardisers to balance public needs directly in their standardisation work and to specify that ESOs should be obliged to take on board certain so called publicly funded "societal stakeholders" to assist them in this task (*see namely in the Communication Section 1.1 and draft Regulation Art. 5*).

3. **Societal stakeholders cannot be entrusted with a legislator's duty.** The Communication acknowledges that Market Surveillance Authorities are important stakeholders of European standardisation ([Communication, Section 1-1, p.2](#)). Indeed, the early participation from authorities would bring assurance that public concerns are taken care of with some balance. On the contrary, we believe that it would be a mistake to grant top-down check-and-balance rights to selected EC-funded organisations ([draft Regulation Art. 12-d](#)).
4. **ESS legitimacy is anchored in the national delegation principle.** In Orgalime's view the national delegation principle is the best way to ensure that all relevant stakeholder interests are involved, as it is easier for them to participate in their own language and without having to travel to another country. At the same time, national authorities have the opportunity to participate – and should do so – in order to safeguard so-called societal interests as enshrined in the relevant legislation in support of which the standards are being drafted. Therefore, caution should be taken that requirements do not result in authorities interfering with the processes and organisations that organise the development of European and harmonised standards ([see in particular in the Communication, Actions 3, 9 & 10](#)). This would put the legitimacy and the current strength of the ESS at risk, since for all standards that do not relate to public policies (80% of the total) industry may well be tempted to seek other fora free from unnecessary public interference to carry out their standardisation work. (See Orgalime's [position paper \(18/02/2011\)](#). Such moves would inevitably undermine the standing and expertise of the ESOs.
5. **ESS efficiency depends on the interest of stakeholders and their expertise.** The concept of “appropriate representation” is in our view intrinsically dependent on the interest of stakeholders and the expertise that they bring in the standardisation work. The claim to improve the “*inclusiveness of the process*” ([Communication, Section 5](#)) to the advantage of a few selected “*European stakeholder organisations*” which are moreover funded by the European Commission is, in our view, misguided.
6. **Commission mandates should be scrutinised by all stakeholders.** Orgalime welcomes the Commission's annual Work Programme, which provides greater transparency on its priorities for standards in support of its policies and legislation ([draft Regulation, Art. 6](#)). We see as much as the Commission a strengthening of the role of standardisation mandates in upcoming legislation as announced for the General Product Safety Directive ([Communication, p.10](#)). Nevertheless transparency about the Commission's programme is not enough: we believe that new **Commission requests also should meet market needs** and be scrutinised by relevant European stakeholder organisations, including industry federations and many more stakeholder groups than those financed by the Commission. Therefore, Orgalime suggests the **creation of a consultative multi-stakeholder platform under Article 7** of the draft Regulation. This would in our view constitute a meaningful consultation process as foreseen in Article 10.2 of the EU Treaty.
7. **Standardisation could be faster, but adding bureaucratic requirements is counterproductive.** Orgalime supports the Commission's wish for a more efficient and rapid standardisation process. However, we are concerned about new and more extensive reporting requirements for both European standardisation organisations and their national members, which are private organisations. In order to ensure a more efficient management, it is not appropriate to impose reporting requirements which will, in our view, slow down the standardisation process without providing added value. These requirements could be very difficult to carry out, such as on “**appropriate representation**” by ‘categories’ of participants. Practice shows that the range of interests of directly affected parties – following the market relevance principle – and their representation in technical committees vary considerably from one to another standardisation work item. Reporting requirements might even end up as being counter-productive, if industry reduces its funding (over 95% of

standards development costs) of the European standardisation system in favour of working in European or international fora and consortia which are free from bureaucratic pressure.

8. **Applying standards in support to EU legislation and policies should remain voluntary.** This is particularly relevant when contrary to what occurs in the context of product legislation, there is no detailed essential requirement in the law, such as is the case in General Product Safety Directive. In this context, enjoining the presumption of conformity to the legislation can easily be turned into an obligation of conformance (*cf. Communication, Action 6*).

## INITIAL SPECIFIC COMMENTS

In the light of our general comments, Orgalime has specific concerns about the following issues as currently spelled out in the draft Regulation:

- 1) **Market relevance should stay the primary fitness check.** Market relevance, as recalled in the *Communication* and in *Article 7-1 of the draft Regulation*, is key for ensuring the attractiveness of the European/Harmonised standards to their potential users. As the use of standards is voluntary, their implementation depends in practice on their ability to fulfil the needs of companies. The 'litmus' test is whether harmonised standards will be used in practice: if they are not used widely, the expected societal/competitiveness benefits will be lost.
  - **Art. 5: Participation in standardisation work is as "appropriate" as stakeholders' genuine interest and amount of expertise dedicated to it.** Legitimate and constructive participation of stakeholders requires the right qualifications to develop a standard that will meet market demand, as well as policy objectives as defined in legislation and specified in mandates. Therefore, Orgalime has profound concerns about the obligation to "*ensure an appropriate representation*" of specific stakeholder groups (organisations listed in Annex III) (*cf. draft Regulation Art. 5*), especially when this becomes a precondition for receiving funding to develop a mandated standard. With public support or not, it should remain the entire and free will of ESOs to facilitate the participation of some stakeholder groups be they SMEs, or any other organisations in the consumer, environment or social field that are or not affiliated to the organisations listed in *Annex III of the draft Regulation*. Even if they had all the economic means available, such stakeholder groups would not always have the necessary qualifications, the time, the interest, nor the personal resources needed to participate actively in all working groups. In any case, ESOs cannot force them to participate, nor provide them with the resources and expertise to do so in any meaningful manner.
  - **Art. 6: Transparency and inclusiveness of European standardisation must work both ways:** Therefore, mirroring the "*demand*" made on ESOs in *Art.5*, the European Commission should open the preparation of the "*European standardisation work programmes of the Commission*" (*draft Regulation Art. 6*) to the consultation of all relevant European stakeholders, including those representing other interests than *Annex III organisations*. For this purpose it is especially important that relevant European industry and trade organisations should be formally included at the consultation stage, e.g. within a multi-stakeholder platform (*cf. our general comment n°6*).
- 2) **Annex III organisations cannot be judge and jury.**
  - We acknowledge the Commission's wish to help financially the constituencies of some stakeholder organisations to participate in standardisation work, in order to supplement the national delegation principle, based on the fact that, for example, consumers are not

well organised in all countries. Orgalime supports the basic legitimacy requirement for each funded European organisation to be mandated by non-profit organisations representing SMEs, consumers, environmental stakeholders and societal stakeholders in at least 2/3 of the Member States ([draft Regulation, Annex III a-iii, b-iii, c-iii, d-iii](#)). Nevertheless, we believe that providing a favoured position for Annex III organisations only, while at the same time supporting them financially inevitably opens up the EU institutions to charges of introducing bias and distortion into their stakeholder consultation process in violation moreover of Article 10.2 of the EU Treaty, since many other stakeholder organisations can legitimately claim to represent, among other, SMEs, consumers, environmental and social interests.

- Orgalime believes that the **list of activities eligible for EU financing of other European Organisations** ([draft Regulation Article 12](#)) is **too comprehensive and not fully justified**.
  - In particular *“the verification of the quality, and conformity to the corresponding policies and legislation of the Union, of European standards and European standardisation deliverables”* ([draft Regulation Art. 12-d](#)) is a task for the Commission and Member States, not for organisations that have been involved in commenting on the draft standardisation mandate and in the production of the standards themselves.
  - Besides, there is also no reason to assume that the organisations listed in Annex III in particular have the skills and expertise to perform these tasks.
- **Commission funding should not underpin European lobbying.** Orgalime welcomes the scoping of activities for which organisations referred to in Annex III could get an EU financing. For the sake of equity and neutrality among stakeholders and to avoid any conflict of interests, Annex III organisations, that are almost exclusively funded by the European Commission, should, if their privileged position is maintained, be excluded from issuing political positions on draft Commission standardisation mandates. We believe, however, that the introduction of a General Stakeholder Platform (*see our general comment n°6*) could help to bring more transparency into a process that currently discriminates against other relevant stakeholders in the framework of Directive 98/34/EC on Commission consultations on draft standardisation mandates.

3) **Orgalime rejects** the idea of **possible Commission mandates to "other bodies"** for the *“production and revision of European standards and European standardisation deliverables”* (...) *“which is necessary and suitable for the support of policies and legislation of the Union”* ([draft Regulation Article 13 \(1\)\(b\)\(i\) in connection with Article 11 \(1\)\(a\)](#) ). Except in the ICT field, as specified in Articles 9 & 10, we believe that it is inappropriate to entrust bodies other than the ESOs to produce or revise European standards, all the more so as such bodies are neither specified in the proposal, nor subject to any of the requirements applying to ESOs or to bodies in the ICT field (cf. Annex II). As this situation would weaken the European standardisation system and undermine the strength of European industry on the international market, we therefore **call for the deletion of Article 13 (1)(b)(i) of the draft Regulation**.

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