



28 September 2023

The European Standardisation System (ESS), which is based on the Regulation 1025/2012 on European standardisation, has offered a successful and reliable model under the New Legislative Framework for Products for many years. Nevertheless, following the 2022 Standardisation Strategy and the conclusion of the targeted amendment to Regulation 1025/2012, BusinessEurope is of the opinion that a revision of Regulation 1025 is unnecessary, despite some of the existing inefficiencies in the system. However, it is also necessary and appropriate as outlined under the Regulation that the evaluation is conducted.

In this regard we do point the Commission towards the ongoing drafting process of the Fit4Future Platform opinion on the European Standardisation System and regret to see that the call for evidence has been started before the Platform could finalise its opinion.

We also caution the Commission with regards to Better Regulation, that any Impact Assessment used to justify a revision of the Regulation must be accompanied with well-sourced data and proportionate policy suggestions. We are particularly concerned that the principles of better regulation are becoming less adhered too and note the [Annual 2020 Regulatory Scrutiny Board](#) report found a significant number of impact assessments support preferred political choices and outcomes rather than serving as an objective aid. Already we caution that the call for evidence may cause some 'leading' conclusions. We of course support and reaffirm that good governance and non-discriminatory participation is essential for standards development. But we must be mindful that in practice this does not lead to justification for protectionist policy and discriminatory actions against international partners.

We also point to the [2022 RSB report](#) which found that the analysis of impacts is the weakest element of all the submitted assessments from 2022 and this in turn is usually resulting from an incoherent intervention logic. We hope that if a revision does occur the impact assessment will join the increasing statistical trend of belonging to positive opinions upon first draft.

We are pleased to see the scope of the call for evidence make the crucial reference to European companies' ability to be competitive on the global market as an area of focus of the evaluation. We trust that the Commission will apply the recent policy of the competitiveness check to its findings, and if an Impact Assessment is deemed necessary for a new proposal that the check will be delivered and thoroughly substantiated.



However, in the spirit of the call for evidence we are happy to present some of our views on where the Commission could focus efforts on during its evaluation and consider questions to formulate around these views for the upcoming questionnaire and consultation.

We believe these views are appropriate to raise and should be asked in some form to stakeholders in line with the purpose and scope of the call for evidence's general aim 'to ensure the ESS is capable of delivering standards in support of a green, digital, and resilient single market.'

1. The call for evidence wishes to focus on development, innovation, and harmonisation, BusinessEurope can think of no better example of where roadblocks to all three occur than as a result of the increased judicialisation of standards, famously exemplified by Case C-613/14 'James Elliott' as well as the ongoing appeal under Case C-588/21 'Right to Know.' The questionnaire to be sent for the consultation to this evaluation should ask in a clear manner if respondents are seeing a positive or negative change in the ESS and to what extent they attribute this change to the cause of judicialisation. Upon conducting its evaluation, we would suggest the Commission provide a section on the various ECJ cases that have emerged in the past years and give a clear indication of how the Commission is applying the rulings.<sup>1</sup>
2. The issue of the Commission's liability in drafting standardisation requests is a regrettable point of tension between Industry and the Commission. However, we would recommend the Commission, in conducting its evaluation work, provide a section in its concluding report dedicated to the issue of its liability in standardisation and addressing the works and arguments commissioned by various stakeholders.<sup>2</sup> The questionnaire should also contain neutral questions about respondents' perception of Commission liability.
3. Consider soft-law measures such as a focus on revising the Vademecum and clarifying issues (such as liability) there. We are of course not naïve to believe this would be a quick and easy process but discussions on these issues in an alternate context would avoid disrupting the framework of the ESS and ongoing standardisation procedures. The questionnaire should provide an option for

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<sup>1</sup> A possible question for the upcoming consultation could be to gauge how stakeholders perceive: Harmonised standards: Enhancing transparency and legal certainty for a fully functioning Single Market COM (2018)764 22 November 2018

<sup>2</sup> Notably: [ETSI TR 103 880](#): Study into the challenges of developing harmonised standards in the context of future changes to the environment in which products are being developed and operated, [ANEC/BEUC](#): The Role of Standards in Future EU Digital Policy Legislation, [ECOS Legal opinion](#): The European System of Harmonised Standards, [German Federal Ministry for Economic Affairs and Energy](#) commissioned legal opinion on the European System of Harmonised Standards.



respondents to indicate if they prefer revising guidelines instead, not at all, or complimentary to, a legal overhaul of the Regulation.

4. Identify decoupling trends between European Standards and International Standards. We would encourage the Commission to identify and work with existing initiatives (such as the High-Level Forum for Standardisation) to publish in their evaluation report a section on the impact of Regulation 1025 on international standardisation mirroring, in line with recitals 3 and 6, 19. With specific attention to the relationship between the Primacy of European Standardisation per recital 6, the Frankfurt and Vienna Agreements and WTO obligations. The questionnaire should also provide a section to identify if respondents do indeed see decoupling trends.
5. Provide a section on common specifications. This area is equally important to investigate as the call for evidence rightly also scopes in 'Financing' of Standardisation Activities. Standardisation is an example of successful private-public-partnership, and the questionnaire and evaluation work should provide stakeholders the opportunity to comment on their experiences with common specifications/technical specifications and provide the ability to quantify this. Such as elaborating estimates on costs incurred from developing a standard that was replaced with such alternatives.

BusinessEurope therefore remains ready and willing to engage with the Commission in the Evaluation process and looks forward to having a constructive and productive exchange of views on the matter.