

POSITION PAPER

The Annual Union work programme for European standardisation for 2017

On 1st June, the European Commission published its package on standardisation, consisting among other things, of the Annual Union Work Programme AUWP 2017. Small Business Standards (SBS) welcomes the package, and in particular, the early publication of the AUWP. An early publication allows stakeholders, such as SBS, to adapt their own Work Programme so as to align it with that of the European Commission.

Furthermore, SBS appreciates the shorter, more focused approach of the 2017 AUWP compared to previous years. Regarding the strategic priorities, SBS fully agrees with the European Commission that ICT should be put at the forefront of standardisation. On the other hand, SBS has reservations regarding standards for services.

The aim of this paper is to provide comments to the AUWP 2017 as well as ideas and feedback that may be used for initiatives identified in the AUWP, such as the increased efforts by the European Commission in 2017 in the field of services standardisation.

ICT standardisation

ICT standardisation is often closely interlinked with the treatment of Intellectual Property Rights "IPRs". Patentable solutions add substantial value to ICT standards and the use of such standards by companies and stakeholders is affected by terms and conditions of those IPRs.

SBS is convinced that the disclosure and use of proprietary technologies through standards creates technological ecosystems that allow SMEs to develop innovative solutions and grow in the global markets. Hence, the standardisation system should maintain sufficient incentives for patent holders to share their technologies through standards on Fair Reasonable and Non-Discriminatory Terms ("FRAND"). The existence and proper function of these technological eco-systems is ever more important with the raising of Internet of Things ("IoT") technologies and products. If European SMEs are to become leaders in the new global IoT markets this will happen in standardised environments where patented technologies are made available at an affordable price to manufacturers of connected products.

On the other hand, IPR policies at SSOs', in particular ETSI, raise certain issues that may undermine the capacity of SMEs to fully benefit the opportunities of standardization.



IPR policies do not specify in a prescriptive way the boundaries of FRAND terms and there are no recognised commercial practices for calculation of FRAND terms. Thus, the terms for the implementation of Standard Essential Patents (“SEPs”) are often negotiated bilaterally between the patent holder and the standards user and are covered by non-disclosure agreements. This creates an asymmetry of information between SMEs, or entities with few patents and no previous experience in negotiations, and larger companies that, whether as patent holders or as implementers, have typically a broader experience in negotiations on SEP licencing agreements and are in a better position to establish FRAND terms. Thus, larger companies have better chances to negotiate more favourable conditions in licencing negotiations than smaller entities.

Other problems for SMEs arise from the huge number of declarations in the SEP database, for instance at ETSI. The complexity is worsened by the fact the ETSI IPR database does not provide a unique mapping of standards to the relevant SEP declarations. Hence, such mapping has to be done at the cost of the companies that intend to use a standard. An additional cost for standards implementers is the technical analysis to confirm the essentiality of patents; such analysis becomes necessary when a licencing negotiation takes place.

All these issues together create disadvantaged conditions for SMEs. In the worse cases, the extreme difficulty in predicting the licencing costs of new products may be perceived by companies as a too big risk and actually become a barrier to investments and innovation.

Therefore, SBS believes that ESOs should continue to improve their IPR policies to achieve greater transparency and reliability of IPR declarations. Also, ESOs should proactively engage their SME members in the definition of IPR policies and should create targeted services for informing and mentoring SMEs on IPR matters.

Services standardisation

The European Commission, both in its 2017 AUWP and its Communication on services standardisation, is calling for the further development and use of standards for services. As highlighted in our position paper on services standardisation, SBS emphasizes the need to assess the market relevance of standards as well as the importance of developing standards in line with market demand.

The service sector is dominated by SMEs, and in particular micro-enterprises: the average company counts 5 employees. These companies are often rooted in the local economic and social context and the services they provide are, usually, a direct response to the requirements and needs of their local market.

In view of the above, SBS proposes to establish an “SME filter”, i.e. a test to check whether a standard is “SME compatible”. This tool can of course be used for standardisation in services, but also standardisation in general.

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Standardisation Requests to the ESOs

SBS welcomes the proposals for standardisation requests, in particular the action to implement the framework for the ICT professions. This is an issue SBS has worked on very much in the past and is keen to see developed to its full potential. Thus we recommend complementing the standardisation work with other support actions to promote the information and voluntary use of the standards by all stakeholders.

As regards the construction sector, SBS agrees on the need to proceed with standardisation works at European level with a view to developing a harmonised assessment method under the Construction Product Regulation (the CPR) for emissions of dangerous substances into indoor air. During the first half of 2016, SBS has contributed to the draft of a delegated act under the CPR that will introduce the classification of performance of construction products in relation to their emissions of dangerous substances into indoor air and we look forward to its adoption.

SBS underlines the impact of innovative SMEs on job creation and growth and welcomes the Commission's proposal in supporting deeper and fairer internal market with a strengthened industrial base by focusing on innovative products and on the assessment of essential characteristics of the construction product performance.

From a more general point of view, the process leading up to the mandates and standardisation requests, SBS calls for increased transparency and inclusiveness for all Annex III organisations.

SBS will monitor some of the other actions such as those relating to chemicals and, in particular, the methods of assessment of the risk of unlisted substances intended to come into contact with food.

International Cooperation

SBS fully agrees with the European Commission's view that promoting European standards in other regions of the world can be beneficial for European industry, in terms of decreasing technical barriers to trade while improving possibilities for market access. However, the potential for such standards is not fully exploited on international level. European National Standardisation Organisations (NSOs) insufficiently coordinate themselves at international level which results in standards being adopted which favour industries from regions other than Europe. SBS sees a huge potential for better coordination and increased cooperation between European standardisation stakeholders which could result in the adoption of international standards that may benefit European industry operating in other regions.

Also, while the involvement of SMEs in the development of standards at European level is slowly improving, at international level, the specific needs and interests of SMEs are still insufficiently represented and taken into account in the process as well as in the end result (the standard). Standards developed at international level therefore tend to favour large multinationals rather than smaller companies. In order to ensure fair competition between large and small companies, SBS calls for actions aimed at ensuring that the interests of SMEs are fully taken into account when international standards are developed. A good start would be to ensure the take-up and application of, among



Technical Committees on European and international levels, the ISO/IEC and CEN-CENELEC Guide 17 respectively on how to write standards that take into account the needs of SMEs.

One concrete proposal is the setting up, within the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC), of an SME group, which would focus exclusively on the interests of SMEs and make sure the standards development correspond to SME expectations.

Other actions foreseen in the Work Programme

The European Commission proposes, in AUWP 2017, that the European Parliament and the Council meets with the EC in the context of the inter-institutional dialogue. With standardisation rising on the political agenda, the proposal to involve all European decision-makers in an inter-institutional dialogue is very much welcomed by SBS. However, to fully exploit the potential for good standards, SBS sees the possibility to expand such dialogue to ESOs and international standardisation organisations. The proposal for a study to analyse the economic and societal impact of standardisation is also useful, not only for increasing our own understanding about the results of standardisation, but also in terms of awareness raising among stakeholders outside the standardisation community *per se*

The Communication stresses that the 2017 work programme complements the actions set out in the 2016 work programme in particular as regards inclusiveness. With his opinion and the support of all Annex III organisations, European Economic and Social Committee (EESC) member Patrick Liebus already called for close monitoring of the efforts of the key standardisation players in order to increase the inclusiveness of the European Standardisation System (ESS). In this context, SBS continues to support the idea of setting up an EESC Ad Hoc Forum on the inclusiveness of the ESS that will look into the activity reports requested under Article 24 of the Regulation 1025/2012 and will, also, finance a study on national mirror committees to assess their compliance with the principle of inclusiveness. In light of the 2017 AUWP's intention to create an inter-institutional dialogue, SBS invites the EC to consider the possibility to use the EESC Ad Hoc Forum as a relevant opportunity to kick-start this dialogue.

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