



# **POSITION PAPER**

## **on the Single Market Strategy**

**COM(2015)550final, SWD(2015)2012final**

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December 2015

Contact Person: Chiara Giovannini, ANEC Senior Manager  
(Chiara.Giovannini@anec.eu)

ANEC-SC-2015-G-025

## Executive Summary

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Although welcoming the political and regulatory initiatives aimed at upgrading the Single Market to meet new challenges, ANEC notes the focus of the Communication on the supply side of the market to make “business easier for business”. We hoped for more measures to improve the **demand side of the market** as, without confident consumers, the demand for products & services in the Single Market will neither be encouraged nor optimised.

ANEC welcomes the intention to **modernise the European Standardisation System** (ESS). Consumers have benefited from a Single Market that owes much to the New Approach and use of European standards to support legislation, but the ESS needs to evolve so that the future needs of consumers can continue to be met – alongside those of business – in the most efficient and inclusive way possible. The ESS would benefit from a fine-tuning to enable the more effective representation of consumers and weaker stakeholders in the standards development process, while respecting a system built for the most part on the national delegation principle.

We welcome the wish to exploit **European standards for services** in order to increase consumer trust in cross-border transactions. Nevertheless, the lack of an overarching European legal framework becomes of still greater significance. Such a framework exists for products and should be built for the safety, quality and liability of services. Without a harmonising framework, European standards will not be able to provide a level playing field as conflicting national regulations (where they exist) will continue to take precedence, so leading to overall legal uncertainty, and consequent producer and consumer detriment.

We note the Commission plans to take actions to strengthen implementation of the **mutual recognition** of goods across Member States (a principle confirmed by the ruling of the European Court of Justice in the “*Cassis de Dijon*” case<sup>1</sup>). Although ANEC recognises that mutual recognition is a pillar of the Single Market, we urge the Commission to make careful distinction between those restrictions that arise from a wish to enhance consumer protection in one Member State and those that have been put in place to protect the domestic industry in another. Where the reason is the former, we think the Commission must use the traditional instruments of harmonisation if it wishes to ensure unimpeded cross-border trade.

Finally, we note most objectives in the Communication will need to be underpinned by a system of **market surveillance and enforcement** that is better coordinated and far better resourced. Hence, although we saw it only as a step in the right direction rather than the definitive answer, we regret that the Market Surveillance Regulation remains blocked in the Council of Ministers through no fault of its own.

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<sup>1</sup> <http://goo.gl/NGLinI>

We believe the updating of the Single Market should be the occasion to unblock this impasse and provide consumers and market operators with an effective framework for market surveillance. We are surprised this opportunity has not been used.

## **Introduction**

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This position paper expresses ANEC's preliminary views on the EC Communication, "Upgrading the Single Market: more opportunities for people and business", issued on 28 October 2015<sup>2</sup>.

As the European association representing consumers in standardisation, the focus of our comments is on the consumer-relevant aspects linked to standardisation.

For ease of reference, we follow the headings and numbering of the EC document.

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<sup>2</sup> COM(2015)550final, SWD(2015)2012final (<https://goo.gl/FZCQpX>)

## General Comments

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Although welcoming the political and regulatory initiatives aimed at upgrading the Single Market to meet new challenges, ANEC notes the focus of the Communication on the supply side of the market to make “business easier for business”. We hoped for more measures to improve the demand side of the market as, without confident consumers, the demand for products & services in the Single Market will neither be encouraged nor optimised.

### 2.1 Collaborative economy

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Clarification on the definition and effects of the collaborative or sharing economy<sup>3</sup>, and how consumers are protected, is to be welcomed. Digital technologies bring rapid changes in consumer behaviours and new business models. There is a need for analysis to be undertaken quickly as innovation might otherwise be hampered, and levels of consumer protection lowered, because of a lack of understanding.

In our view, although the motivations and experiences behind the sharing economy may be new, consumers have the same rights to reliable information and effective protection in all cases. Different and proportionate rules may need to be applied to different situations but there needs to be clarity on what consumers should expect<sup>4</sup>. New business models should not be seen as an opportunity to lower the levels of consumer protection and the quality of the services provided, simply because they represent economic activity that was not present before.

Beyond the applicable legal framework, the Commission should also consider the effects of the collaborative economy on the relevant standards and how standards can help meet the challenges posed by these new business models.

### 3.1 Modernising the European Standards system

#### Joint Initiative on Standardisation

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ANEC welcomes the intention to modernise the European Standardisation System (ESS). Consumers have benefited from a Single Market that owes much to the New Approach and use of European standards to support legislation, but the ESS needs

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<sup>3</sup> Also referred to as the peer-to-peer economy, mesh, collaborative consumption. Characteristics of the sharing economy according to Belk (2013) are temporary access and non-ownership of goods and services and reliance on the Web 2.0, allowing users to connect with one another. See Opinion of the European Economic & Social Committee on collaborative or participatory consumption, a sustainability model for the 21st century, 2014.

<sup>4</sup> <http://goo.gl/bgGhfo>

to evolve so that the future needs of consumers can continue to be met – alongside those of business – in the most efficient and inclusive way possible. The ESS would benefit from a fine-tuning to enable the more effective representation of consumers and weaker stakeholders in the standards development process, while respecting a system built for the most part on the national delegation principle. The relevance of European standards, and the edge in competitiveness that European companies can gain through compliance with European standards, can only be improved through a strengthening of the voice of the demand-side stakeholders in the system. The ESS offers a unique model where this could be achieved.

We see the Joint Initiative on Standardisation (ex-PACT) as an opportunity to aim at that better consumer protection & welfare. Although the Communication recognises the importance of producing standards in a more inclusive way, we note with some concern that the associated Staff Working Paper refers only to a “system, created and operated by the industry for the industry”. This is perhaps true of the standards initiated by business, but it does not apply to those significant minority of standards that support legislation and public interest. Indeed, a main ethos of Regulation (EU) 1025/2012 was to encourage the more effective participation of other stakeholders in the ESS. As noted above, we believe even “non-mandated standards” can benefit from the contribution of consumers and other demand-side interests. Nevertheless, it is clear the public-private partnership underpinning the ESS rests on two pillars - the European standards initiated by the EC (and EFTA) in support of legislation and public policies and those initiated by others wishing to take advantage of the Single Market. This distinction may come to the fore in development of the Joint Initiative.

Though we appreciate the value of the studies by AFNOR, BSI & DIN on economic benefits of standardisation, economic growth is not an end in itself and should lead to an improvement in the quality of life. As part of the modernisation of the ESS, we urge the Commission to conduct a study into the societal benefits of standardisation (e.g. the degree to which European standards for the safety of products result in fewer accidents, fewer fatalities, reduced costs of healthcare & fewer days lost from work or school). We think this should be an overall aim of the modernisation of the ESS and a parameter by which its success should be measured.

We also believe the Joint Initiative should not only be a consensual document that captures a list of wishes or recommendations, but include an implementation phase in order to provide real added value. Given the context of the Communication, this phase should foresee stakeholder platform to facilitate and monitor implementation of the recommendations by the responsible bodies during the remaining term of the Juncker Commission.

We agree Europe’s leadership in international standardisation must be consolidated. However, bearing in mind the very close relationships between ISO-CEN and IEC-CENELEC, it is vital to ensure that the rules governing the relationship between the European and International levels enable the development or revision of standards that respond to a mandate or standardisation request to remain in CEN, CENELEC or

ETSI – i.e. within the European Standardisation System - unless there is unanimous agreement among European stakeholders that the work be done in ISO or IEC<sup>5</sup>.

## Services Standardisation<sup>6</sup>

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We welcome the wish to exploit European standards for services in order to increase consumer trust in cross-border transactions. Nevertheless, the lack of an overarching European legal framework becomes of still greater significance. Such a framework exists for products (e.g. General Product Safety Directive and the Product Liability Directive) and should be built for the safety, quality and liability of services. Without a harmonising framework, European standards will not be able to provide a level playing field as conflicting national regulations (where they exist) will continue to take precedence, so leading to overall legal uncertainty, and consequent producer and consumer detriment.

We had hoped to see attention drawn to these aspects in the Communication with a view to enable the implementation of article 26(5) of the Services Directive (which explicitly encourages the development of voluntary standards and codes of conduct to ensure quality of service provision).

Our research shows that core elements for consumers that should be addressed in service standards include customer satisfaction; complaints handling & redress procedures; information provision; service safety; personnel competence; contracts & billing, and accessibility. The implementation of Mandate M/517<sup>7</sup> on horizontal service standards looked into these core elements to a certain extent. The planned Commission Guidelines on services standardisation should comprehensively reflect these core elements. Although the Communication states these will be drawn from the successful experience acquired from products, the key difference remains the absence of a general European legislative framework for services safety. Moreover, due to the intangible nature of services, and the fact that services are often performed at the interface between supplier and customer, the overlap between the 'design aspect' and 'service' aspect should always be taken into account.

Healthcare is an area of national competence. Nevertheless patients do have a right to seek healthcare across the EU, and health professionals can work in different EU countries. Some professional associations (e.g. of doctors, dentists), especially in leading European economies (notably Germany), are vocal in their opposition to the development of European service standards complementing clinical standards for some medical procedures (e.g. cosmetic surgery). However, this opposition ignores that consumers are travelling cross-border for such treatment to countries where no

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<sup>5</sup> <http://goo.gl/2teqKW>

<sup>6</sup> Also relevant for section 2.3 of the Communication on a market without borders for services.

<sup>7</sup> <http://goo.gl/jodKJe>

national regulations or professional codes exist. A European standard, adopted as a national standard in 33 countries, can provide a state-of-the-art reference should a consumer need to take redress in the country of treatment. Again, standards cannot affect countries where such procedures are regulated.

## 4.3 Strengthening the Single Market for Goods

### Mutual Recognition and Market Surveillance

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We note the Commission plans to take actions to strengthen implementation of the mutual recognition of goods across Member States (a principle that was confirmed by the 1979 ruling of the European Court of Justice in the "*Cassis de Dijon*" case<sup>8</sup>). Although ANEC recognises that mutual recognition is a pillar of the Single Market, we urge the Commission to make careful distinction between those restrictions that arise from a wish to enhance consumer protection in one Member State and those that have been put in place to protect the domestic industry in another. Where the reason is the former, we think the Commission must use the traditional instruments of harmonisation if it wishes to ensure unimpeded cross-border trade<sup>9</sup>. We also question whether removing national trade barriers without accompanying European legislation is sufficient to ensure a true Single Market.

We do not comment, at least for now, on the Commission proposal for a "passport" for the recognition of professional qualifications.

As the Commission confirms, ensuring trade on the principles of mutual recognition needs an effective system of market surveillance and enforcement. However, ANEC thinks it more important to use the few resources available to market surveillance and enforcement authorities on stopping non-compliant (and perhaps dangerous) goods and services from reaching the market.

For years, consumer organisations and economic operators alike have emphasised the need to establish an effective market surveillance system in the Single Market<sup>10</sup>. Most consumers believe market surveillance will protect them from buying unsafe products. As the Single Market Communication rightly points out, this is not true as market surveillance means different things in different countries. Even the most stringent legislation and standards become worthless if not applied or enforced. This leads to inconsistencies and, above all, sees insufficient resources available to police the very many products on the market. As a result, the consumer expectation for safe products is not always met.

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<sup>8</sup> <http://goo.gl/NGLinl>

<sup>9</sup> Opinion of the Consumer Advisory Committee on the consequences of the ECJ's *Cassis de Dijon* judgement, CCC/29/81 rev. ENV 159/81, 16 October 1981.

<sup>10</sup> <http://goo.gl/GAXqrR>

We consider there is an urgent need to establish a European framework for market surveillance in order to ensure a coherent approach to market surveillance activities across all Member States, and to make more financial and human resources available for market surveillance activities.

This is why we welcomed the Commission's Product Safety Package published on 13 February 2013. It should have been the opportunity to introduce more demanding requirements for national market surveillance activities in Member States. However, after the approval of the Package by the European Parliament last year, discussions remain blocked in Council on an issue only remotely linked to market surveillance (the "country of origin" indication in the draft Consumer Product Safety Regulation).

We especially regret this stalemate is delaying the setting up of a pan-European accident & injuries database. This is needed to help identify preventive measures and their effectiveness, and help surveillance authorities make informed decisions on risk assessment. It is not only consumers who want it - business does too.

We believe the updating of the Single Market should be the occasion to unblock this impasse and provide consumers and market operators with an effective framework for market surveillance. We are surprised this opportunity has not been used.

Of course, improved coordination among market surveillance authorities can only be welcomed but it will not address the fundamental flaws of the present system.

## **Conclusions**

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ANEC welcomes the publication of the Communication on the Single Market. In the years since "1992", the Single Market for goods has often been considered a "done deal" when, as the Communication explains, it requires to be deepened.

Meanwhile, the cross-border trade in services continues to suffer from the lack of a harmonising framework at the EU level, with the Institutions remaining traumatised by the furore that preceded the adoption of the Bolkestein Directive<sup>11</sup> in 2006. ANEC recognises that the Commission intends to encourage the development of standards for services, but no standard can take precedence over national regulation. We also note business tends to see provision of a service as local, and has not been inspired so far to contribute much to the development of European standards in the services area. But consumers do consume services cross-border (tourism services perhaps being the most evident) and, according to ANEC research, suffer detriment from the different approaches of Member States<sup>12</sup>.

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<sup>11</sup> <http://goo.gl/AxZJoc>

<sup>12</sup> <http://goo.gl/bgGhfo>

Despite this welcome, we regret the focus of the Communication on making it easier for “business to do business”, with scant regard for the consumer (or user) in being the source of demand for the products and services to be supplied.

The Joint Initiative on Standardisation should provide the platform on which to build a European Standardisation System able to meet the challenge of 2020 and beyond. However, the vision needs to be bold and ensure the ESS has an added value over other providers of formal standards in meeting the needs of European stakeholders, most particularly, the legislator. Given the enthusiasm of the Juncker Commission for “better regulation”, the ESS needs to deliver standards that are fit-for-purpose and inclusive. Timeliness is more important than speed in the development of the full EN (and all three ESOs have other deliverables where speed is more appropriate). We think the Initiative needs a multi-stakeholder platform to facilitate and monitor the implementation of its recommendations (if it is to improve on other initiatives such as the EXPRESS report<sup>13</sup>).

Finally, we note most objectives in the Communication will need to be underpinned by a system of market surveillance and enforcement that is better coordinated and far better resourced. Hence, although we saw it only as a step in the right direction rather than the definitive answer, we regret that the Market Surveillance Regulation remains blocked in the Council of Ministers through no fault of its own. Again, we ask Council to decouple the Regulation from the more controversial proposal in the Product Safety Package, the Consumer Product Safety Regulation.

ENDS.

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<sup>13</sup> <http://goo.gl/4x6wmi>

## About ANEC

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ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



***Raising standards for consumers***

**European association for the coordination  
of consumer representation in standardisation aisbl**

Avenue de Tervuren 32, box 27, B-1040 Brussels, Belgium

Tel.: +32 2 743 24 70 / Fax: +32 2 706 54 30

E-mail: [anec@anec.eu](mailto:anec@anec.eu)

EC Register of Interest Representatives:  
Identification number 507800799-30

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ANEC is supported financially by the European Union & EFTA

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