

The New Approach in Setting Product Standards for Safety, Environmental Protection and Human Health: Directions for the Future

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**EXPERIENCE WITH THE NEW APPROACH
- FROM AN ENVIRONMENTAL POINT OF VIEW -**

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Involvement of the EEB

The European Environmental Bureau consists of 140 member organisations in 27 countries and with more than 14 million members/direct supporters in these countries. The EEB works on many different environmental issues with a European perspective, including standardisation. The work with standardisation has been part of the EEB's work for ten years, so far without any specific financial support, so on a very limited scale. Logically, the focus has been the impact of standards to the environment.

On the initiative of the EEB, this year, a group of large European Environmental Organisations and several national organisations, including the Danish Society for Nature Conservation (DN), founded ECOS, the European Environmental Citizens Organisation for Standardisation). ECOS is to support and develop standardisation work in and for the environmental movement in the consciousness that standards have a huge impact on Europe's environment. ECOS has so far no financial support for its work, but we are waiting for the Commissions answer to an application we sent in August.

The evolution of environmental policy making

The environmental policy simultaneously exploded and imploded throughout the 90s. With the explosion the environmental policy decisions are diffused to new forums. Environmental policy is not determined in the demarcated national parliamentary process alone but in complex interactions and battles between private as well as public national, European, and international actors. These actors include the European Commission, WTO, ISO, CEN, CENELEC and civil society organisations like the EEB. Ofcourse they also include very much powerful business organisations, in Brussels more in particular UNICE.

With the implosion of the environmental policy I mean that environmental policy processes are narrowed down and are of an increasingly closed nature. Environmental policy decisions increasingly are being determined as being technical and transferred to relatively closed forums of experts, such as technical standardisation working groups in CEN or committees within the European Commission, often with involvement of the Member State governments, but not of the European Parliament and with a very imbalanced involvement of non-governmental players.

The risks of the New Approach

Standards are no longer simply a voluntary option amongst others, but have become *the* way to comply with New Approach legislation. From a strictly legal point of view, such standards may still be regarded voluntary, however *in practice they have become binding*. In other words, the New

Approach has transformed technical standards into *soft law*. This in return may pose a problem for the legitimacy of the New Approach, as this legitimacy rests on the voluntary nature of standards. For us the main question then is, whether it is posing a problem from an environmental point of view. The answer is that **it depends** :

The standardisation bodies are private and autonomous organisations, in which the voluntary effort of industry is the driving force. It was exactly this voluntary effort which the EU wanted to draw on in the New Approach. However, industry pursues its own interests - unfortunately - and these interests are not necessarily those of the EU's citizens or the environmental movement. ***Hence it should not be expected that standardisation organisations by themselves realise the aims of EU's environmental policy, nor of any national integrated product policy.***

The need for a clear environmental framework

This means that the Commission and the political system have to develop tools and procedures to ensure that standards indeed have a high environmental quality, that they support and reinforce EU's environmental legislation and objectives.

For the general legal basis for such a revision we refer to article 6 of the EU Treaty, which obliges the EU Institutions to ensure the integration of environmental concerns in all policy areas. This article needs to be elaborated into some much more concrete decisions for the standardisation process.

So our first demand is a **framework directive on environmental demands to products**, similar to the product safety-directive. It should lay down a structural and specified obligation that environmental objectives and safeguards are part of the essential requirements and that no other essential requirements can complicate the achievement of such requirements.

Secondly, the requirements of the framework directive should be **specified in each New Approach directive** that, but setting concrete environmental benchmarks for the standards.

These front end requirements need to be complemented with some improvements in the standardisation process:

- Firstly, it is necessary that the Commissions develop tools for an **ongoing evaluation** of standards to examine if they are living up to the environmental essential requirements.
- Also effective **repeal and sanctioning mechanisms** for the political level to control the standardisation bodies must be established to be able to address non-compliance.
- Furthermore, New Approach standards should be **explicitly** recognised or refused as harmonised standards by the EU Authorities, and a way of ensuring this would be by having a Unit in DG Environment dealing with standardisation and the environment horizontally.
- In the standardisation process, participation of organisations defending environmental interests should be made possible.
- Finally, **minority opinions** of organisation involved in the standardisation process but do not agree with the result, should be communicated to the Commission as part of the report, so that the Commission and Member States can take account of their arguments.

Our recommendations are not developed without a context – as said, our experience is limited as so far we do not have been given the means to get involved on a substantial scale. But we have reason to be concerned, given the lack of interest for environmental performance we have often seen in the

main European standardisation body. There are a few concrete examples that we have come across where the environmental performance is clearly unacceptable.

One example are the standards for **heating appliances**. These appeared to be violating national legislation from Austria and Germany with regards to NO_x, CO₂ and volatile organic compounds for several appliances up. Acceptance levels of the standards exceed these national laws with between 100% and 900%. While they may not have violated law in other countries, nor the EU regulations, it shows clearly that the EU standards are not at all state-of-the-art or with a particular environmental ambition.

Another example are the standards on **construction materials**, where we are concerned in particular about the tolerance towards hazardous substances.

But the case we have been engaged in most is, paradoxically, the standards developed for the only New Approach Directive with an environmental origin, the **Packaging Directive**. Here we clearly see the weakness of the system:

- The Directive's does have essential environmental requirements, but they are formulated in VERY general terms. Furthermore the targets of the Directive are weak seen from an environmentalist point of view.
- Despite this, the adopted standards still do not fulfil the essential requirements.
- The minority groups in the standardisation committees didn't have any possibility to influence the process. The minority groups were in this case, not only the environment movement, but also the Danish Government and the Danish Standards Association.
- On various occasions the Commission showed its strong discontent with the standards and informed CEN that the draft standards did not comply with the mandate. CEN didn't change anything!

Currently, there is discussion to rely on CEN to assist in the implementation of the **Electric and Electronic Equipment Directive**, in particular to set standards for management systems. It is essential that the mistakes of the Packaging Directive won't be repeated.

Attempts to find solutions

The Environmental Help Desk and Environmental guidelines are two attempts from the standardisation bodies to try to integrate environmental concerns. Both are instruments developed inside the standardisation system, and they do not have to live up to the requirements of the European Treaty or European Institutions, neither do their have the possibility to change the fundament of the system.

The initiatives of the standardisation bodies can not replace the political responsibility, and therefore the main focus has to be on changing the method in a way that raises the political influence on the process and thereby make politicians and public authorities accountable again.

TO CONCLUDE:

- **The EEB can not support use of the New Approach in the environmental field without some major changes. We call on the EU Institutions to ensure that the New Approach is transformed into a one that safeguards and promotes environmental interests.**