



Brussels, 24 September 2019

## ECOS Comments on the consultation note for the Guidance on practical aspects of the implementation of Regulation (EU) No. 1025/2012

In the context of the development of the Guidance on practical aspects of the implementation of Regulation (EU) No. 1025/2012, this paper outlines ECOS comments on the consultation note.

We welcome further clarification of Regulation (EU) 1025/2012 in many aspects, including the legal nature of standards, the implementation of the provisions and principles of transparency and inclusiveness, and the interaction between policy-makers and standardisation organisations during the Standardisation Request process.

### Guidance objective (item 1) and scope (item 2): An opportunity to improve transparency

Even though the regulation contains necessary requirements for the transparency and inclusiveness of the European Standardisation System, it falls short on the details, making it difficult to assess the extent to which the system has truly improved in this regard. For instance, while the Regulation requires the ESOs to encourage and facilitate the effective participation of all stakeholders, including those representing the environment, there are no provisions as to how this should be done.

At the same time, both national standardisation processes, and those at international level beyond Europe, have a strong impact on the European Standardisation System (ESS) and its deliverables. The way in which the ESS interacts with these two levels needs to be clarified with the view to ensure an appropriate implementation of Regulation (EU) 1025/2012. For example, an increasing number of European standards are mostly or entirely based on standards and documents developed at international standardisation organisations under the Vienna and Frankfurt Agreements. However, these international organisations, and their members, do not operate under similar principles of transparency and inclusiveness, a fact clearly reflected in the content of European standards they influence and dictate.

Furthermore, the CJEU James Elliott ruling shows the necessity to have greater clarity on the exact legal nature of harmonised standards with a view to review the process and ensure that the necessary guarantees and control mechanisms are in place<sup>1</sup>.

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<sup>1</sup> ECOS (2018), The use of standards in legislation and policies, [https://ecostandard.org/section\\_documents/position-paper-the-use-of-standards-in-legislation-and-policies/](https://ecostandard.org/section_documents/position-paper-the-use-of-standards-in-legislation-and-policies/)

The development of this Guidance document provides a good opportunity to clarify that effective participation should also be facilitated at international level when work in response to an SR is carried out at that level, to ensure a smooth, efficient and transparent implementation of Regulation (EU) 1025/2012. Therefore, in terms of scope, the Guidance should address provisions of Article 5, in addition to Articles 10 and 11.

### Guidance structure

In addition to clarifying the regulatory provisions and improving systemic weaknesses of the standard drafting process, the stages that precede and succeed it also merit clarification. ECOS believes that the administrative control over the standardisation process should be further strengthened to ensure that the principles of lawful delegation are met.

#### Standardisation Requests (item 3.1)

While there is administrative control over Standardisation Requests (SRs) and stakeholders are rightly consulted, questions can be raised by the fact that the SRs are drafted in close collaboration with the ESOs. The SR on material efficiency in the area of Ecodesign (M/543) and the Standardisation Request on F-gases (M/555) are two examples where the Requests were in fact largely redrafted by the standardisers, mainly on the grounds that they would have otherwise been rejected (e.g. M/529 which preceded M/543 was actually rejected by CEN and CENELEC). This is not appropriate given the SR is a legal instrument.

The list in section 3.2 should include a bullet on the facilitation of participation of societal stakeholders at all levels of the standardisation system.

#### Assessment of standardisation deliverables (item 3.2)

With regards to HAS consultants, we welcome the Commission's recent decision to handle their recruitment and management. However, we believe that the role of the consultants should be clearly defined and strengthened, with clear independence rules to ensure the independence and impartiality of the consultants throughout the process.

### Guidance Implementation: Environmental NGO participation is key

In order to ensure an appropriate and successful implementation of the Guidance, the participation and contribution of environmental NGOs, amongst other Annex III organisations, in all aspects of its development and follow-up should be ensured.

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