

Common Position of BDI, BITKOM, DIN and DKE on

The Process of Legitimation

of the referencing of certain specifications of fora and consortia
in policies and for public procurement

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Introduction

1. This document is the joint position of the BDI (Federation of German Industries¹), BITKOM (German Federal Association for Information Technology, Telecommunications and New Media²), DIN (German Institute for Standardisation³) and DKE (German Commission for Electrical, Electronic & Information Technologies of DIN and VDE⁴). It further details the *Joint position of the BDI, BITKOM, DIN and DKE on ICT aspects in the context of the review of the European standardization system*⁵ (referred to below as the *Joint position*). It focuses on the requirements for the direct referencing of certain specifications of fora and consortia in the ICT sector in policies and for public procurement (referred to below as *referencing*), as laid down in items 18 to 20 of the *Joint position*, by describing a process with which such *referencing* can be legitimized and which meets the requirements named in the *Joint position* paper.
2. It should be emphasized that the statements in that *Joint position* are explicitly confirmed, as they form the basis of the present document. For the sake of clarity, some statements made in the previous paper are repeated here, either verbatim or in substance.
3. Attention is brought to item 18 in the *Joint position*:

Priority must be given to strengthening the cooperation of the ESOs with fora and consortia. Fora and consortia should find ways of introducing their specifications in the ESOs, especially where political legitimacy is needed. The ESOs on their part should make it easier for the fora and consortia to do so, i.e. they should foster the current "fast track procedures" and improve this process. This can also be achieved by introducing suitable specifications at international level at ISO and IEC and by transferring them to European level under the Vienna and Dresden Agreements.

¹ <http://www.bdi.eu>

² <http://www.bitkom.org>

³ <http://www.din.de>

⁴ <http://www.dke.de>

⁵ Available at http://www.focusict.org/sc/bbdd_position_EN

4. The process described below is to be understood as applying to the referencing of individual specifications. The application of this process to the entire specification portfolio of the forum or consortium in question, or to any future specifications or specifications currently under development is expressly excluded.
5. The following process has been developed so that it is not only streamlined and allows a decision to be made within a relatively short period of time, but also ensures that the essential prerequisites for *referencing* are fulfilled.

Responsibility

6. Legitimizing the referencing of certain specifications of fora and consortia in policies and for public procurement⁶ (referred to below as *legitimation*) is above all a legal measure. As such, the overall responsibility for this *legitimation* at European level should be with the European Commission.
7. The planned "Multi-Stakeholder Platform" (see Communication COM(2011)311, action 21⁷) should take on an advisory and recommendatory role within the framework of the *legitimation* process.
8. The planned "Multi-Stakeholder Platform" should work on the basis of information provided by a secretariat that is yet to be set up under the direction of the Commission. Thus, the responsibility of the quality of this information will lie with the Commission itself.

Initiation of the process

9. One premise of this *legitimation* is that it must be driven by demand only. Accordingly, the *legitimation* process should be initiated in response to an application made by an entity having a particular need for this, normally a public agency within the European Union. This application should be submitted to the Commission's DG Enterprise and Industry which should pass it on to the secretariat of the Multi-Stakeholder Platform for processing. Necessary additional information should be added to the application by the secretariat.
10. The application should include information which is relevant for assessing whether the specification in question fulfils the criteria specified for *legitimation* in item 20.III of the *Joint position*, i.e. that the specification
 - a. meets the "Requirements for the Recognition of Technical Specifications in the Field of ICT" proposed in Annex II of the draft Regulation on European Standardisation⁸;
 - b. fulfils the criteria of coherence with the collection of European Standards;
 - c. is widely disseminated and accepted on the market.
11. Furthermore, the application should state whether the specification should preferably be dealt with in a fast track procedure of the ESOs or the International Standardisation Organisations and whether such a path has already been pursued.

⁶ It should be emphasized that referencing is not foreseen for specifications of fora and consortia that are relevant to legislation, i.e. in connection with the New Approach and the New Legislative Framework. Specifications of fora and consortia will not assume a status comparable to European Standards by successfully passing the process of legitimation.

⁷ Available at http://ec.europa.eu/enterprise/policies/european-standards/files/standardization/com-2011-311_en.pdf

⁸ Available at http://ec.europa.eu/enterprise/policies/european-standards/files/standardization/com-2011-315_en.pdf

12. A suitably structured procedure for submitting applications, e.g. via the Internet, should be set up.

Assessment

13. The criteria for *legitimation* serve, inter alia, to ensure that - in terms of economic competition – there are no reservations regarding the modalities used in the development of the specification being assessed. Therefore, a public enquiry procedure is absolutely essential⁹.
14. Any objections should refer to the criteria listed in item 10 above.
15. In addition to objections, it should be possible to submit comments on technical aspects of the specification being assessed. Such technical comments should not have direct influence on the results of the assessment. They might, however, become relevant when assessing the criterion of quality according to Annex II of the draft Regulation (see also item 18 below for more information on the further use of such comments).
16. To ensure the transparency of the entire assessment process and to give SMEs, especially, the chance to submit objections/comments, the public enquiry procedure should be initiated by means of a national notification. Subsequently, it should be possible to submit objections and comments at national level.
17. To this end, after processing a new application for *legitimation* and making any necessary clarifications, the secretariat of the Multi-Stakeholder Platform should distribute that application to the Platform members and, at the same time, to the ESOs and the national standardisation organisations. The latter should announce this application at national level in a suitable manner (preferably via the Internet), should accept any objections and comments within a period of sixty days¹⁰, and once this period has lapsed, should pass these bundled comments/objections on to the secretariat of the Multi-Stakeholder Platform.
18. Once the public enquiry period is over, the Multi-Stakeholder Platform should – within two months - discuss a recommendation to the Commission regarding the *legitimation* of the specification in question. If there have been any objections, these should be dealt with in a meeting with the person(s) making the objection and, where possible, representatives of the originator of the specification. The Multi-Stakeholder Platform may also decide to draw on additional experts. If any comments regarding technical content have been submitted, these should be passed on to the originator of the specification so that these comments can be dealt with, e.g. in a future revision of the specification.
19. The options for the Multi-Stakeholder Platform's recommendation to the Commission are as follows:
 - a. A recommendation in favour of *legitimation*;
 - b. A recommendation against *legitimation*.

Both options may be complemented by a recommendation that the specification be transposed into a European or International Standard using a fast track procedure offered by one of the ESOs or the International Standardisation Organisations;

⁹ It should be noted that this procedure is not to be understood as the Public Enquiry as it is conducted for the development of European Standards. It is rather meant to be a similar procedure reaching out to stakeholders on the national level, allowing them to respond to the assessment process discussed in the present document.

¹⁰ In accordance with the WTO Code of Good Practice for the Preparation, Adoption and Application of Standards (http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

20. The following information should be taken into account when making a recommendation:
 - a. The information supplied in the application for *legitimation*;
 - b. An evaluation of the preferred possibility of transposing the specification into a European or International Standard using a fast track procedure offered by one of the ESOs or the International Standardisation Organisations;
 - c. Any additional information provided by the secretariat of the Multi-Stakeholder Platform regarding fulfilment of the criteria for *legitimation* according to item 10 above. This should include, but not be limited to, a compilation of any technical comments received (cf. items 15 and 17);
 - d. All objections received and their clarification, as well as documentation drawn up by the secretariat of the Multi-Stakeholder Platform during the public enquiry procedure carried out in accordance with items 13-17 above;
 - e. Any additional information contributed by the individual members of the Multi-Stakeholder Platform.
21. The objections submitted and their disposition are to be documented as part of the recommendation.
22. The Multi-Stakeholder Platform's recommendation should be based on a consensus of its members.
23. If consensus cannot be reached, the dissenting opinions should be documented. Where necessary, the application should be returned to the secretariat of the Multi-Stakeholder Platform for further clarification of questions and issues explicitly named by the members of the Multi-Stakeholder Platform. An additional national notification and public enquiry procedure will not take place.

Completion of the process

24. The Commission should come to a decision on the application on the basis of the Multi-Stakeholder Platform's recommendation, and should then inform the applicant, the originator of the specification, and the recipients of the original notification, of the result.
 - a. If the referencing of the assessed specification is to be legitimized, a corresponding positive entry should be made in a list of already assessed specifications maintained by the Commission.
 - b. If the referencing of the assessed specification is not to be legitimized, a corresponding negative entry should be made in a list of already assessed specifications maintained by the Commission.

If the Multi-Stakeholder Platform has recommended that the specification should be transposed into a European or International Standard, the Commission should decide if they recommend to the ESOs and the originator of the specification to initiate a suitable process for transposing the specification. A corresponding entry should be made in a list of already assessed specifications maintained by the Commission.
25. To ensure transparency, in all cases the Multi-Stakeholder Platform's recommendation and the Commission's final decision should be announced at national level in the same manner as the original national notification.