

## Position Paper

### BITKOM Comments on

### “Vademecum on European standardisation - European Standardisation in support of Union legislation and policies - Part I to III concerning the Commission mandates and requirements to be given in such mandates”

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BITKOM represents more than 2,200 companies in the digital sector, including 1,400 direct members. With more than 700,000 employees, our members generate a domestic turnover of 140 billion Euros a year, exporting high-tech goods and services worth another 50 billion Euros.

Comprising 1,000 small and medium-sized businesses as well as more than 200 start-ups and nearly all global players, BITKOM' members offer a wide range of software technologies, IT-services, and telecommunications or internet services. They produce hardware and consumer electronics or operate in the sectors of digital media and the network industry. The companies' headquarters are predominantly located in Germany with an additional amount of 10 percent in other countries of the EU and the USA as well as 5 percent in other regions. BITKOM supports an innovative economic policy by focussing the modernization of the education sector and a future-oriented network policy.

BITKOM welcomes the efforts of the European Commission to revise the Vademecum on European Standardisation and align it with Regulation 1025/2012. Regarding this consultation, BITKOM appreciates the opportunity to provide comments on the draft Vademecum and thus be able to bring in the long-standing expertise of the BITKOM members in standardisation and standards developments.

### Strong support for the New Approach and the New Legislative Framework

BITKOM strongly supports the basic principles of the New Approach and New Legislative Framework: Regulators formulate their technical requirements; stakeholders develop harmonised standards meeting these requirements; the implementation of such harmonised standards is the preferred way of complying with European regulations. Thus, the regulator draws from the technical expertise of the experts and therewith puts responsibility on stakeholders, while at the same time unburdening public authorities from detailed technical work.

Moreover, the possibility to make use of harmonised standards includes the following basic principles which industry strongly supports:

- Application of a harmonised standard is only one possibility to comply with a directive.
- Implementation of a harmonised standard means that it can be presumed that the essential requirements of the directive have been met.
- Harmonised European Standards remain voluntary recommendations.

BITKOM proposes that the Vademecum makes even stronger and clearer statements confirming these basic principles. It is important that they remain as the basis for European standardisation – and especially in the context of the European Mandate process.

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This should also take into account and reconfirm that standards are voluntarily applicable technical documents developed by technical experts – not legal documents developed by legal experts. The assessment if a standard complies with a mandate and the respective legislation needs to be carried out in a practical way during the standards development process.

### Taking into account the specifics of the ICT sector

BITKOM strongly supports the changes for the ICT sector introduced by Regulation 1025/2012, especially in Articles 13 and 14 and in Annex II. These changes have successfully been implemented since January 2013. The ICT Multi-Stakeholder Platform is a unique instrument worldwide bringing all stakeholders in ICT standardisation together and thus ensuring first-class advice and assistance to the European Commission on all issues concerning ICT standardisation in support of EU policies.

BITKOM particularly welcomes that the Commission may work with other organisations than the European Standardisation Organisations (ESOs) when it comes to making best use of global ICT standards. In the ICT sector, many of the most relevant standards are developed in global ICT fora/consortia where the technical experts are present and the expertise in the respective key area has been built up. For the purpose of achieving interoperability and facilitating innovation by integrating ICT technologies, it is essential that such ICT Technical Specifications may be used directly in public procurement in Europe.

BITKOM recommends that the specific processes which are available for the ICT sector are described in the Vademecum. However, it should be made clear that these processes apply to the ICT sector only and are not intended for, and may not be applied in, other sectors.

### Some further comments on special provisions

- The principle that the development and implementation of standards are voluntary is a major principle in European standardisation and regulation. It forms the basis of the New Approach and the New Legislative Framework. The Vademecum should stress this principle and avoid possible misunderstandings, e.g. as can happen with Part I, 2.1 b. It should be noted that standards shall not be a “compulsory means to comply with”. Standards are not laws. In this context BITKOM welcomes the background given in Part I, Annex I, 1, of the Vademecum and recommends that the points made there are also explicitly made in the main text of Part I.
- Standards development should remain free from interference by public authorities, including testing methods (contrary to what is stated under Part II, section 3.9).
- Deadlines (Part II, 3.12): The work of standards development is always market driven and depends on the contribution of technologies and of the involvement and availability of technical experts. Therefore, deadlines will have to be agreed by the stakeholders working on the standards development. Of-

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ten it cannot be predicted how long it will take to reach consensus if complex issues arise during standards development. Therefore, it must be understood that deadlines are always subject to change if critical issues arise.

- Part III, 2.7.2, states that “ESOs shall ensure that technical bodies responsible for developing harmonised standards have sufficient knowledge on legal requirements which are to be supported”. This may be misunderstood as technical experts would be expected to be educated about legal requirements, or must even demonstrate that they have such knowledge in order to be allowed to participate in the standards development. BITKOM believes that, while knowledge about the legal requirements is important in the context of corresponding standards development activities, it must be clear that legal knowledge is not a pre-requisite for technical experts. Therefore, BITKOM recommends to rephrase the respective sentence in Part III, 2.7.2, in the following way: “In collaboration with the regulators, the ESOs shall facilitate the availability of knowledge about the respective legal requirements which are to be supported within the technical bodies responsible for developing harmonised standards.”
- The ESOs should not be “fully responsible for executing the mandates and for verification of the conformity of the published European standards or European standardisation deliverables with the corresponding Union legislation and policies.” (Part III, Annex II 1.) It is rather the Commission together with the ESOs who are responsible, as stated in Article 10.5 of the Regulation.
- As standards are technical documents it is neither feasible nor possible to indicate a precise link between individual normative clauses of a mandated standard and the supported legal requirements. This is particularly not feasible for international standards developed under the Dresden and Vienna Agreements. (Part III, 2.7.4.; Part III Annex I, 1. and 2.3.)
- Standards are not an extension of Union legislation. If European harmonised standards have been applied when designing a product, presumption of conformity should remain the initial tool to facilitate marked access for manufacturers. For the past 40 years, since the Low Voltage Directive was established in 1973, presumption of conformity has facilitated manufacturers’ demonstration of conformity. It was never meant as an obligation for manufacturers to use standards, nor to bind authorities to “automatically accept [it]” (Part II, section 3.7.1), nor to discharge these authorities from carrying out a risk or compliance assessment on suspicious products.
- The Vademecum remains unclear on the future role of the so called New Approach Consultants. The consultants have been instrumental in the past in making sure that the technical content of a standard is helping users to adhere to the essential requirements of the respective directive. BITKOM recommends the Commission to foster the role of the New Approach Consultants.
- In order not to frustrate technical experts and threaten to render their standardization work futile, there must not be an ex-post assessment of standards in regard to their compliance with the requirements of legislation and the relevant mandate. Documents should be assessed during the standardization work, and possibly guidance given. Whoever carries out this assessment needs to be entrusted by the Commission. Contracting consultants to carry out this assessment has proven helpful in the past. The Regulation 1025/2012, Article 10.5 does not foresee an “ex-post judgment” but rather judgment carried out cooperatively between ESOs and the Commission. (Part I, 4.4; Part III, Annex I, 1., whole Annex II)

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### Increase the need for market relevance in standardization

- Standards need to be market relevant. Standardization needs to respond to market needs.
- The only possibility for stakeholders to comment on draft mandates and to give technical input is by consultation during the preparation phase. In this light, a consultation phase of two or three weeks is too short. (Part II, 4.2.2)
- A mandate should not prevent the ESOs and their stakeholders from developing deliverables in addition to the mandated work programme, provided they do not interfere with this work programme. If there is a market need, such work should be possible without an extension of the initial mandate or a new mandate. (Part I, 4.2 und 4.6; Part III, 2.6)
- Part I, 3.1, includes the statement that "One of the specific actors in this market is the public authorities, which may consider a need for technical specifications in order to support implementation of legislation or its policies." BITKOM recommends that this section also mentions the fact that policy needs should be developed in a broad process taking into account stakeholder needs, market needs, etc. Policy needs cannot be decoupled from market needs and stakeholder interests (industry, service providers, NGOs, etc.). This is the strength of a democratic approach and should, therefore, be expressed in the Vademecum, as well.

BITKOM would be happy to provide further clarifications or discuss the above mentioned points at any time.