



## **CEN and CENELEC response to the public consultation on “Revised rules for the assessment of horizontal cooperation agreements under EU competition law”**

CEN and CENELEC welcome the opportunity to provide with some comments on the documents listed in the European Commission public consultation on "Revised rules for the assessment of horizontal cooperation agreements under EU competition law".

Our comment regards in particular the draft *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*.

### **The principles set in the draft Guidelines**

On a general basis we welcome the European Commission’s Guidelines.

Point 276 and subsequent paragraphs indicate the conditions that normally will be considered as sufficient to avoid the application of Art. 101. In this context, we welcome the mention of the principles of “transparency” and “openness” of the standardization processes, as well as of an IPR policy based on FRAND commitments. We consider all these aspects as essential for a sound and competitive safe environment in the standardization context.

CEN and CENELEC believe that European Standards exist primarily to support and serve the competitiveness of the European Industry. European Standards are also an appropriate vehicle to introduce innovative solutions or products into markets.

With this objectives in mind CEN and CENELEC and their members are, with ETSI, recognized in the Directive 98/34 of 1998 as the European and national standard organization bodies entitle to provide harmonized standards. Hence, the principles of coherence, transparency and openness, laid down in the Guidelines, are already incorporated in our daily work, along with of the principles of “consensus, independence of special interests, efficiency and decision making based on national representation” (cfr. Directive 98/34 Whereas n. 24)

CEN and CENELEC sustain the involvement of the private sector in the standardization process, as this is crucial to keep the market relevance of the system and to continue



servicing the market needs and disseminate innovation. Undertakings come to European standardization to find complete and stable solutions. In this context a clear and coherent IPR policy is an important aspect that can guarantee stable solutions for successful standard implementation in innovative areas.

In 2003 CEN, CENELEC and ETSI have signed a document on the “General Guidelines of Cooperation” with the European Commission and EFTA, in which the three European standardization bodies commit to guarantee that all interested parties have access to standards by ensuring that these -including any intellectual property rights (IPR) they might contain- can be used by market operators on fair, reasonable and non - discriminatory conditions.

#### **IPR policy applied by CEN and CENELEC**

With this in mind, in 2009 CEN and CENELEC have aligned their common IPR policy with the common ISO, IEC and the ITU-T IPR policy by reviewing their Guide 8 “CEN -CENELEC Guidelines for Implementation of the Common IPR Policy”.

Consequently, the current implementation guidelines, patent statement and licensing declaration forms -based on FRAND commitment- are aligned to the international Standard Development Organizations to ensure a coordinated platform for European undertaking of level playing field to successfully respond to global market demands and evolutions in practices and technologies.

We therefore invite the European Commission to take fully into account the existing IPR policies of ISO, IEC and the ITU-T in the final text of these Guidelines.

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More information on the CEN-CENELEC Guide 8 “Guidelines for Implementation of the Common IPR Policy” can be found at the following web address:

<http://www.cen.eu/boss/supporting/Reference%20documents/guides/Pages/default.aspx>

Information on the ISO, IEC and the ITU IPR policy can be found at the following address:

[www.iso.org/patents](http://www.iso.org/patents)