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Chapter 4.1

Role and preparation of mandates

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New Approach Industries, Tourism and CSR
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Role and preparation of mandates

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Introduction

The original version of this document (from 2003) followed a request from the Council in its 1999 Resolution¹:

"The Council calls upon the Commission

- *to ensure that standardisation mandates under the new approach are prepared accurately and efficiently, affording Member States and the European standards bodies sufficient opportunity to contribute;*
- *to ensure that standardisation activities covered by mandates are subject to thorough monitoring and that appropriate measures are examined with the European standards bodies in order to ensure proper progress".*

The aim of this revised document remains to describe, on the basis of the "acquis", the common understanding by all parties directly concerned of the role of mandates. The document also establishes the guidelines for the preparation and adoption of mandates. The term "parties directly concerned" means the Commission services, the Member States, the European standardisation bodies², and the New Approach consultants. The involvement of other various parties (industrial, social partners, consumers, environmentalists, etc.) and their role in the initiation and the preparation of mandates is also reflected and recognised in this document.

The original version of this document of 2003 has been reviewed by the Commission services in order to bring it up to date and to recognise changes in practice, in the agreements between the Commission and the European standardisation bodies (e.g. on the Annex 'Z') and the shift of emphasis in the mandates issued away from the New Approach sectors and toward new areas, such as support to environmental policies and legislation.

This document is applicable as guide for mandates under the New Approach directives, in fields relating to legislation other than the New Approach and in general in support of European policies outside European legislation. However, legislation other than New Approach directives (for example Directive 2001/95/EC on General Product Safety³) can contain partly differing provisions, for instance with regard to the setting and consultation of mandates.

The document is divided into two sections:

- Chapter I deals with the role and place of mandates as an instrument for public authorities.
- Chapter II gives an exhaustive account of the elements designed to respond to the Council's first request relating to the accurate and efficient preparation of mandates.

¹ OJ C 141 of 19.05.2000

² see Annex I of the Directive 98/34/EC (OJ L 204, 21.7.1998, p. 37–48)

³ OJ L 11 of 15.01.2002, p.4

A separate part of the Vademecum deals with the monitoring of mandates, as stated in the Council's second request, and to information on mandates and on their implementation.

Chapter I - Role of mandates

1. Basis

1.1 Reference documents

Standardisation is a process based, in principle, on the needs of the market. One of the specific actors in this market is the public authorities, which require technical specifications in order to implement European legislation and/or policy. These needs should be given close attention because they safeguard public interests. The development of technical specifications increasingly requires expertise as well as the involvement of the various parties concerned (industrial, social partners, consumers, environmentalists, etc.). This led to the idea that appeared in the 1980s of asking the standards bodies to draw up technical specifications required by the public authorities.

This concept was incorporated in three basic documents:

- a. *Directive 98/34/EC*⁴. The provisions of this Directive form the legal basis for the mandates, the Commission's requests to the European standardisation bodies to draw up European standards or to carry out some other standardisation work (cf. Annex 1: Article 6(3) and (4)(d)). The committee established by this Directive must be consulted on these requests.
- b. *The general guidelines on cooperation* signed between the Commission and EFTA on the one hand and CEN, CENELEC and ETSI on the other hand⁵.
- c. *Council Resolution of 7 May 1985 on the New approach to technical harmonisation and standardisation*⁶. This involves a fundamental principle of the New Approach, which stipulates that, for the directives based on this method, the task of preparing technical specifications is entrusted to the competent standardisation bodies. This resolution also specifies that the quality of the harmonised standards must be ensured by the standardisation mandates, "the execution of which must conform to the general guidelines on cooperation" (cf. also Annex 1).

Currently more than 30 directives, in particular the "New Approach" directives, entrust mandates to the European standardisation bodies, after consultation of the Standing Committee⁷. The

⁴ OJ L 204, 21.07.98, p. 37. The Directive 98/34/EC is a codification of the Directive 83/189/EEC and its amendments

⁵ OJ C 91, 16.04.2003. These general guidelines replaced the original General Guidelines of 1984

⁶ OJ C 136, 04/06/1985 P. 0001 - 0009

⁷ The Standing Committee set up by Article 5 of Directive 98/34/EC (OJ L 204, 21.7.1998, p. 37-48), also known as the '98/34 Committee' or the 'Committee on Standards and Technical Regulations'

Decision on financing of European standardisation⁸ stipulates that mandates are eligible for financing only if they have been consulted in the Standing Committee.

Several of these directives also refer to the general guidelines on cooperation and to harmonised standards which, by their definition, are elaborated on the basis of a standardisation mandate. In the meantime, several mandates have already been issued in the framework of directives inspired by the New Approach concepts, where general reference to standards is made. This is for example the case for the directives on energy labelling, general product safety, as well as the Interoperability Regulation concerning the Single European Sky. A number of mandates have also been issued in support of other European Community legislation than the New Approach legislation (e.g. mandates for development of test methods in support of the Community legislation on foodstuffs).

In addition, a large number of mandates have already been issued outside the purely legislative framework in support of European policy.

1.2 Concept

1.2.1 The concept of a mandate is based on the principle of partnership, cooperation and the clear division of tasks between the public authorities and the duly recognised European standardisation bodies. Through a mandate, the public authorities ask the European standardisation bodies to draw up technical specifications of a normative nature that meet "their" requirements. In practice, these standards must enable manufacturers to design and manufacture products that comply with the legal requirements. On the one hand, it is up to the public authorities to lay down strict requirements in order to safeguard the public interest. On the other hand, it is up to those responsible for preparing the standards to draw up suitable standards that meet these requirements and take account of "the state of the art". Therefore, it is not a question of delegating power but of recognising the specific competencies of each operator. It is the mandates which describe and justify, case by case, the tasks that the public authorities assign to the European standardisation bodies. It is on these mandates that the clarity of each party's role, the complementarity between regulations and standards and the quality of European standardisation depend.

1.2.2 The choice of standards bodies is justified by the fact that these bodies have an appropriate structure and work according to clearly defined and recognised procedures. In the standards bodies several basic principles are applied, such as the participation of all the interested parties, transparency, the establishment of consensus, the public enquiry and the vote. The standardisation work required must also be achievable for the European standardisation bodies within a reasonable time period. This condition is assessed in light of their potential technical capability and their ability to apply the basic principles of standardisation mentioned above.

1.2.3 Experience shows that those who draw up standards are not in a position to provide high-quality standards or are even blocked in their work if, in a previous stage, the regulatory/essential⁹ requirements are not sufficiently precise and/or if "political" choices are left

⁸ OJ L 315, 15.11.2006, p. 9

⁹ The expression "essential requirements" is a specific expression used for the regulatory requirements in the framework of New Approach directives.

open. "Political" choices cannot therefore be left to the standards bodies. When a new directive based on the New Approach is being drawn up, close attention must be paid to the detailed and precise establishment of the essential requirements.

1.3 Areas in which mandates can be used

The method of referring to standards, applied for the first time systematically in the New Approach directives later became more common in certain other fields. This approach was formally encouraged, in the first instance, by the Council Resolution of 18 June 1992¹⁰ (points 17 and 21) calling on the Commission to apply this method, where necessary, in future European draft legislation.

Moreover, this Council Resolution (point 17) also encouraged the use of European standards as an instrument for economic and industrial integration in the single market. This involves promoting European standardisation in this European policy, even in cases where it is not based on legislation, as in the field of new technologies.

The Council Resolution of 28 October 1999¹¹ also emphasises in point 10 "the role of European standardisation as a means to meet specific needs of the European market, to serve the public interest, in particular in support of the European policies, to provide standards in new domains...".

In its Resolution of 10 November 2003¹², the Council acknowledged the importance of the New Approach as an appropriate and efficient regulatory model allowing technological innovation and enhancing the competitiveness of European industry, and confirmed the necessity of extending the application of its principles to new areas.

According to the Commission Communication on the role of European standardisation in the framework of European policies and legislation of 18 October 2004¹³, "the extension of making use of standards in areas of Community legislation beyond the Single Market is highly desirable, taking of course into account the specificities of the areas concerned, in accordance with the Commission proposals on governance and better regulation".

1.4 Practical benefit of a mandate for the European standardisation bodies

Mandates enable the European standardisation bodies to have precise details on the common expectations of the public authorities, to draw up a well defined number of standards and to plan their work. Mandates should be regarded as reference documents for the standardisation activities.

¹⁰ OJ C 173 of 09.07.1992

¹¹ OJ C 141 of 19.05.2000

¹² Council Resolution of 10 November 2003 on the Communication of the European Commission "Enhancing the Implementation of the New Approach Directives" (*OJ C 282 25.11.2003 p. 3*)

¹³ COM (2004) 674 final

Recommendations A

1. *Experience has shown that referral in legislation to standards and thus the use of mandates in legislation is a tried and tested technique which should be continued and even promoted in new fields.*
2. *The use of the mandating method outside European legislation also ought to be encouraged if it fits in with European policy. However, this method should not be considered as a substitute for regulations which have failed.*
3. *When a New Approach-type directive is being drawn up or revised, the Commission services must ensure that the essential requirements are as precise as possible.*

2. Status of mandates

2.1 Reference framework

Mandates specify the public authorities' expectations towards the European standardisation bodies. They indicate the general context of the standardisation work, as regards a given European policy and/or the legislation concerned. It is a unilateral act inviting the European standardisation bodies to draw up standards, responding to certain conditions - such as the risks to be covered - and assuming certain tasks. Mandates must be regarded as the framework which refers to the public interest requirements and which enables the standards bodies to develop quality standards that meet these requirements.

Under the New Approach, if there is any doubt about a standard, reference should be made to the essential requirements of the directive concerned. These requirements must be regarded as the only legal reference points.

The Commission services have examined the question of the legal status of a mandate and the result of this examination is presented in a separate document.

2.2 Commitment of the European standardisation bodies

Although in theory the European standardisation bodies can refuse a mandate, in practice these cases are rare. Nevertheless the European standardisation bodies sometimes ask for changes to the mandates with the view of their acceptance. The acceptance of the mandate by an European standardisation body must, however, be regarded as a commitment on its part and on the part of its members to complete the work required within the time agreed. If an European standardisation body is not in a position to fulfil this commitment, it must inform the public authorities (namely the Commission and, if necessary, the Member States through Standing Committee) clearly stating the reasons. The support of these public authorities must be obtained in order to be able to amend or, if necessary, cancel this commitment.

This commitment should be distinguished from the possible contract (grant agreement) which may be signed between the Commission and a European standardisation body following a mandate and which stipulates the European financing requirements as well as the methods for supplying the documents/reports.

Recommendations B

1. *A standardisation mandate is a request from the Commission to the European standardisation bodies, after having received the opinion of the Standing Committee, to draw up and adopt European standards or alternative standardisation deliverables or to carry out some other standardisation work. A mandate must specify the needs of the public authorities, indicating the context of the European policy and, where appropriate, referring to the requirements of the legislation concerned.*
2. *If there is any doubt regarding the validity of a harmonised standard, reference must be made to the essential requirements of the legislation on which the mandate is based.*
3. *A mandate accepted by the European standardisation bodies should be regarded as a firm commitment on their part with respect to the public authorities. If the European standardisation bodies are unable to meet this commitment, detailed reasons should be given to enable the public authorities to consider an amendment of the mandate including the timetable for completion.*

Chapter II - Preparation and issue of mandates

This chapter is devoted to the aspects that make it possible to draw up mandates with greater accuracy and efficiency. Before defining the contents of a mandate it is necessary to outline the various types of mandates, which have different functions. This chapter then sets out the current and possible elements of the three procedures, namely the preparation of draft mandates, the consultation of the Standing Committee and transmission of the mandate to the European standardisation bodies.

1. Types of mandates

1.1 Study, programming and standardisation mandates

In principle, there are three types of mandates: study mandates, programming mandates and standardisation mandates.

a. The study mandate aims to determine if European standardisation is relevant and feasible in a specific field or for a certain subject. This type of mandate is most common in non-regulatory fields or for new sectors.

b. The programming mandate asks the European standardisation bodies to draw up a standardisation programme in a given time. This programme has to contain inter alia the subjects to be standardised, the relevant technical organisations as well as the completion dates laid down. It can also include an inventory of the existing standards to be revised in order to meet the set requirements.

c. A standardisation mandate calls on those drawing up standards or other alternative standardisation deliverables to prepare and adopt within a given time European standards in a specific field, possibly on specific subjects.

It can also include the verification, and, if necessary, the revision of existing standards. The list of the subjects and/or standards (new standards and existing standards to be revised) that the European standardisation bodies will draw up on the basis of this mandate should be regarded as the work programme under the mandate. It makes it possible to follow the work that is planned and to monitor the progress made in executing the mandate.

Apart from these three types of mandates, there are also "combined" mandates. This involves mandates asking the European standardisation bodies to prepare in a first phase a work programme and in a second phase the implementation of this programme. This normally happens in the case of major standardisation work where several families of products and/or several issues (safety, for instance) need to be dealt with. At the end of the first phase, a "right of inspection" by the public authorities (the Commission and possibly the Member States through Standing Committee) can be included, according to needs, in the standardisation programme. This right of inspection may be under various formats: for information, for opinions or for approval (in this case with possibility of removing or adding subjects).

In principle, any type of publication by the European standardisation bodies may be the subject of a standardisation mandate. However, in practice, and a fortiori for the directives under the New Approach, it is mostly limited to European standards (ENs) in order to ensure that the various principles of European standardisation (such as identical transposition at national level) are applied. Indeed, it is necessary that within the framework of the various European policies, there are identical standards throughout the European Union. In order to avoid any misunderstanding, it is therefore necessary to specify in each mandate the type of document to be provided.

1.2 Closed and open mandates

The first important mandates contained the detailed inventory of the standards to be worked out or the subjects to be standardised. These were what are called closed mandates, which resulted in the need to amend the initial request when those drawing up the standards deemed it appropriate, in the course of their work, either to combine the specifications in another way or to add other subjects to be standardised, in the field referred to by the mandate. Now the important mandates are open. The European standardisation bodies may, during standardisation work, add or modify to a certain extent the subjects referred to in the programme submitted, after having informed the Commission services and, in the event of a major amendment, the Standing Committee.

1.3 Mandates of limited or unlimited duration

Once the standards are adopted and submitted to the Commission, it is considered that the mandate has been completed. However, the mandates must not be regarded as closed, but as being "dormant". Indeed, the revision of a European standard to adapt it to technical progress (cf. the internal rules of CEN and CENELEC) must in principle be regarded as having to be carried out under the terms of reference of the mandate in question.

In particular for the revision of the harmonised standards drawn up under the New Approach directives, the same standardisation principles and the same procedures valid for the first version of the harmonised standard continue to apply (inter alia the procedure for publishing the standard references in the OJ, as well as the formal objection procedure).

The question of possibly maintaining the standstill¹⁴ does not arise. A national standardisation body may in fact never begin work on a subject that has already been the subject of European harmonisation.

It is clear that revision of a standard in response to a formal objection¹⁵ should require a specific request, in other words a supplementary mandate, from the public authorities. Even if a European standardisation body is already in the process of revising the standard in question, a commitment on its part will be useful as regards the aspects to be improved and the deadlines for completing this revision.

¹⁴ See Article 7 of Directive 98/34/EC: the national standardisation bodies should not take any action which could prejudice the harmonisation intended.

¹⁵ For details on formal objections see Vademecum on European standardisation, part II, document 6: „Formal objection to a harmonised standard - Guidelines for the administrative procedure“

Recommendations C

1. *For important standardisation work, it is recommended that firstly a programming phase be provided for, either through a separate programming mandate or through a combined mandate. In the case of the New Approach directives, it is advised that the standardisation programme be submitted to the Commission services for their approval, before proceeding to the implementation stage.*
2. *Even without a specific programming mandate, the response from the European standardisation bodies should contain a work programme, which will also make monitoring easier.*
3. *The mandates drawn up under the New Approach directives continue to be valid in order to ensure and provide a framework for adapting the harmonised standards to technical progress.*
4. *The revision of a harmonised standard following a formal objection requires in principle a specific request, i.e. a supplementary mandate, from the public authorities.*
5. *It is advisable that public authorities' requests to the European standardisation bodies for any type of normative document should be drawn up in the form of a mandate.*

2. Requirements with regard to the contents of a mandate

As indicated above, the mandate defines the public authorities' expectations of the European standardisation bodies. It is therefore important to pay close attention to the contents of a mandate. Indeed, the quality of a mandate has a significant influence on the standardisation activities and therefore also on the quality of the standards drawn up. Several elements should be included in a mandate.

The mandate should answer clearly the following questions in relation to the standardisation work requested:

- Why?
- What?
- How?
- When?
- Who?

2.1 Title of a mandate

The title should contain the key elements of the description of a mandate. It should specify the type of the mandate (study mandate, programming mandate or standardisation mandate).

It must state to which of the European standardisation bodies it is addressed and which specific subject it covers. Mandates are in principle sent to the three European standardisation bodies, except if it is evident that only one or two bodies will be responsible for its implementation. The systematic issue of mandates to the three European standardisation bodies avoids the public authorities intervening in the division of tasks between the European standardisation bodies. The fact of sending a mandate to a single European standardisation body cannot be considered as barring the participation and/or contribution of other European standardisation bodies.

Optionally, it may make a reference to the legislation or policy area under or in which it is to be developed.

2.2 Justification and indication of the framework of the European and regulatory policy

A mandate can be issued on the basis of:

- *either legislation* (e.g. a New Approach directive that foresees the use of harmonised standards or the Single European Sky Interoperability Regulation that foresees the development of standards that will become Community Specifications),
- *or policy* (e.g. to support the creation of lead markets or to promote policy objectives such as accessibility).

It can also be a combination of these two elements.

A mandate must firstly set out the context of the relevant European policy, the basic legislation and the specific legislation. Moreover, if necessary, reference should be made to the other European policies to be taken into account, as well as to the corresponding legislation. This document therefore has to describe the framework in which the standards are required to support a policy and/or legislation. It should be stressed that, even for mandates outside European legislation, it is necessary to specify the political framework for the requested standardisation by drawing attention, for instance, to documents of a "political" nature.

References to mandates already approved in this field or for the products concerned are also useful.

The mandate must also justify the need for the harmonised technical specifications as well as the goals to be met when these are available and used. These elements should be regarded both as justification of the public authorities' request and as a framework within which the European standardisation bodies are supposed to work.

The mandate text does not, however, need to explain the legal basis for the issuing of mandates under Directive 98/34/EC. This is assumed for standardisation requests.

2.3 Reference to and clarification of the requirements

It is also important for the mandate to be precise as regards the regulatory/essential requirements and conditions imposed on European standards (for example, the aspects - such as risks - to be covered by these standards). In the case of legislation, and specifically in the case of the New Approach directives, the mandate must at least refer in detail to the essential requirements quoted in that legislation. When these essential requirements are very general, it is useful to clarify and explain them, while taking care not to restrict or expand them. The more precise a mandate, the easier it is to verify at a later stage the conformity of the standards drawn up under this mandate with these regulatory/essential requirements.

Where there is a specific need, it will be possible and even necessary to draw up a very precise mandate. This may be the case when it becomes evident, following the introduction of a formal objection, that a standard does not comply entirely with the essential requirements and/or that there is a need to revise the standard.

However, serious consideration should be given to the level of detail of the request. As the mandate forms the terms of reference for the work the European standardisation bodies are to do for the Commission, the mandate should give the European standardisation bodies a sufficient level of detail. An insufficiently precise mandate will lead to differences in interpretation and the possibility that the European standardisation bodies will deliver work that is not well targeted to Commission needs. However, the mandate should not be too detailed as this may mean that it will need to be amended on several occasions if it transpires during the standardisation process that certain elements cannot be delivered in the precise way envisaged. This question of the level of precision should be discussed with the European standardisation bodies as part of the informal consultation of the draft mandate.

Mandates relating to safety and/or health aspects not covered by the New Approach should refer to one or more risk assessments of the products concerned and may include data on actual accidents. These mandates must also take account of the existing standardisation and regulatory situation in the most up-to-date manner possible.

The services developing the mandate should consider making a request to the European standardisation bodies to take into account any environmental impacts that would arise from the work to be carried out.

2.4 Involvement of the parties concerned

The question arises as to whether it is essential to specify in a mandate certain basic principles of standardisation which are normally applied, such as openness to the various parties involved and their possible participation and the need for standardisation to be based on a consensus between all the parties. In general this is not necessary, except if there is a desire to stress explicitly the specific collaboration and involvement of certain interested parties, such as environmental bodies or consumer associations. Where appropriate, it is also necessary to specify the need or usefulness of collaborating with specific bodies, which are competent in the area concerned.

2.5 Completion dates

A mandate also specifies the dates of adoption of the standards and if possible the dates on which these documents must be ready for public survey. These details are included either in the body of the mandate or in the attached work programme.

2.6 "Standard" clauses

Lastly, each mandate must contain "standard" clauses, such as the standstill for national activities and the close cooperation between European standardisation bodies (see Annex 2 for more information).

Two remarks can be made on the subject of the standstill arrangement:

- the standstill arrangement must be taken to refer to Article 7(1) of Directive 98/34/EC,
- in the case of blockage of standardisation work at European level, this standstill cannot be lifted unilaterally by the standardisers. Each individual issue related to lifting the standstill must be discussed with the public authorities, taking into account the solution being considered for the suspended work covered by the mandate.

As regards work at international level, it should be noted that in principle nothing prevents the European standardisation bodies from applying the agreements with the ISO/IEC so that work under a mandate is carried out in these bodies. However, the European standardisation bodies must ensure that the standards resulting from this work correspond to the requirements of European legislation and the mandate, including the completion dates and conform to the cooperation guidelines. This means that the clause in the mandate which allows specific work to be transferred to the international level must contain particulars which make it possible to verify after the event that these criteria have been met.

2.7 Relationship between content of the standard and essential requirements for harmonised standards for New Approach Directives

For each harmonised standard for a New Approach Directive, there should be a clear and precise indication of the relationship between its content and the essential requirements covered. It should preferably be contained in the standard itself (e.g. as annex thereof). This indication is very useful for a number of reasons:

- it enables the Commission services to check whether this standard actually covers in an appropriate manner the essential requirements indicated, and, where appropriate, if the standard covers aspects outside legislation;
- it provides manufacturers using the standard with a working tool enabling them to comply with the essential requirements of a directive.

The indication of this relationship during the preparation phase of a standard allows all parties concerned to assess the work in progress and check that the work does indeed correspond to both the Directive and the mandate. In particular, this information should allow the users of a standard to establish to which level this standard provides presumption of conformity with the essential requirements covered.

Recommendations D

1. *A mandate is only justified if there is a need on the part of the public authorities. Such a request must specify as far as possible the political expectations and the requirements of the public authorities.*
2. *In addition, a mandate must, if possible, clarify and explain the requirements in cases where they are too general in European legislation, while remaining consistent with the regulatory/essential requirements. A mandate must guide the standardisers, without imposing constraints at the level of the elaboration of the technical solutions.*
3. *A mandate must spell out a number of elements, which allow it to be monitored, and the standards supplied to be formally verified.*
4. Any amendment to a mandate has to undergo the same procedure as the mandate itself. In order to avoid such amendments, the Commission services have to pay special attention to the formulation of draft mandates. In particular, the level of precision and detail has to be considered here, this should be discussed with the European standardisation bodies already as part of the informal consultation of the draft mandate.

3. Procedure for preparing a draft mandate

The mandate is normally drawn up at the initiative of a Commission department. However, Article 6(3) of Directive 98/34 stipulates that the Standing Committee may ask the Commission to invite the European standardisation bodies to draw up a European standard. The initiative for a mandate stems from the public authorities. This does not prevent the various players on the market, such as consumers, from contacting these authorities to demonstrate the value of having a mandate, and so of having European standards, in a particular area.

Before a mandate is submitted to the Standing Committee, the various parties involved must be consulted informally in order to make sure that this mandate will be accepted and will produce results that are acceptable. This provision makes it possible to respond to the Council's invitation of 28 October 1999¹⁶ to afford "Member States and the European standards bodies sufficient opportunity to contribute" (cf. point 25, indent 1).

¹⁶ OJ C 141 of 19.05.2000

It must however be ensured that these informal consultations take place within a reasonable time. A correct balance has to be struck between the requirement to consult the various parties concerned in advance and the need to issue a mandate quickly. One must also take account of constraints such as the lack of availability at this stage of the three language versions. Moreover, the role of the Standing Committee and its members, as stipulated in Article 6(4)(e) of Directive 98/34/EC, cannot be overlooked. A mandate with a very broad scope or on a difficult subject requires a more in-depth consultation.

Moreover, apart from internal consultation within the Commission, as indicated above, certain other guidance has already proved useful, such as:

3.1 Stable legislative text

In the case of new legislation, it is not always essential to await its final adoption before issuing a mandate. However, a stable text must already be available in order to begin standardisation work. A mandate based on the "common position" makes it possible to save time as regards standardisation and even as regards the implementation of the legislation concerned. In some cases it may be useful to issue a mandate, and particularly a programming mandate, as early as the moment of the adoption of the draft directive by the Commission.

3.2 Consultation of the national administrations concerned

It is useful for the service responsible for a mandate to firstly consult its usual contacts in the Member States in order to verify if a mandate adequately meets the needs of the European policy and/or legislation concerned. The existence of a specific sectoral framework composed of the Member States, in charge of the implementation of this policy/legislation is an asset in consulting the competent national public authorities in the field concerned. Where this consultation occurs, it should be mentioned in the mandate text.

3.3 Informal consultation of the European standardisation bodies

It is recommended that the responsible service, makes informal contact at the same time with the European standardisation bodies, and even, through their central secretariat, with the technical committee concerned, in order to verify whether it is possible for the standards to be completed within the desired time frame. This enables the technical committee to programme the necessary work even if the mandate has not yet been formally accepted.

3.4 Consultation of the other stakeholders

Depending on the field concerned, direct consultation of the other interested parties (social partners, consumers, SMEs, relevant industry associations, etc.) should also be provided for. For example, in the case of a mandate relating to consumer health and/or protection, it is clear that the association ANEC should be consulted directly.

Recommendations E

1. *In the case of new legislation, it may be useful not to await its final adoption before issuing a mandate; however the text must already be stable.*
2. *Before submitting a mandate to Standing Committee, it is recommended that the issuing Commission service consults informally all the parties involved in the field concerned, and particularly the competent administration in the Member States and the European standardisation bodies, while trying to strike a balance between the duration of this consultation and its "democratic" nature. It is advisable to attach to the draft mandate a simple list of the parties involved that have been consulted.*

4. Procedure for consulting the Standing Committee

4.1 When the issuing service has consulted the various interested parties informally, the draft mandate is submitted to the Committee for formal consultation, as stipulated in Article 6(4)(d) of Directive 98/34/EC. This consultation is required for mandates under the New Approach directives, but also for any other request for standardisation to the European standardisation bodies.

The draft mandates must be submitted to the Standing Committee in 3 language versions, in English, French and German. The translations must be prepared by the sectoral Commission service developing the mandate. The mandate will be submitted to the Standing Committee through the CIRCA server.

The consultation of the Standing Committee is not just a formality. The aim of this consultation is to reach a consensus between the public authorities on what they expect from the standards bodies. This consensus is first sought through the national consultation, initiated by each member of the Standing Committee and then between the Member States at the meetings of the Standing Committee in close cooperation with the Commission. In the absence of a consensus the Chairman can call for a vote. Because the committee is an advisory committee, this vote will always be a simple majority vote.

4.2 There must therefore be time for the members of the Standing Committee to carry out consultations at national level. This means that the Commission must be in a position to provide the documents in time. On several occasions the members of Committee 98/34 have expressed this requirement. A period of at least three weeks should be allowed. It should be noted that there might be an argument for extending this period to four weeks in the case of a fairly broad mandate on which it is difficult to achieve a consensus.

The committee can deliver its opinion through a written procedure, thus without waiting until the date of the next meeting. The CIRCA server, a forum for the electronic exchange of comments, between the members of the Standing Committee and the Commission is used for the communication within the written procedure.

4.3 It should be noted that the participation of the representatives of the European standardisation bodies in the meetings of the Standing Committee makes it possible to obtain an initial response to this mandate on their behalf.

4.4 As a rule, three meetings of the Standing Committee take place a year. Over the last few years, the written procedure has been increasingly used for the consultation on mandates.

Recommendations F

1. *The draft mandates must be transmitted in good time to the members of the Standing Committee in order to enable them to hold appropriate consultations at national level and to deliver their opinion within the required time.*
2. *The increased use of a written procedure for consultation of the Standing Committee makes it possible to accelerate the procedure for approving a mandate, thereby increasing efficiency.*

5. Procedure for transmission to the European standardisation bodies and acceptance by these bodies

5.1 Transmission to the European standardisation bodies

When the mandate has received a favourable opinion by the Standing Committee, the issuing service draws up the final version of the mandate, taking into account as far as possible the comments submitted by the members of the Standing Committee. This final version is then forwarded in English, French and German to the European standardisation bodies by official letter, followed by a transmission by electronic means. This final version is also provided to the members of the Committee through the CIRCA server and is uploaded to the database of mandates.

5.2 Acceptance of the mandate by the European standardisation bodies

- Mandates are accepted or refused by the European standardisation bodies according to their own internal rules, through the CEN and CENELEC Technical Boards and the ETSI Board. Acceptance/refusal by the European standardisation bodies can last several months depending inter alia on these procedures, the opinion of the technical committee and the resources available.
- The practice with respect to the acceptance/refusal of the mandates is different for each European standardisation body. No rules on the communication of this decision to the Commission exist. CEN's practice is now to send a formal letter of acceptance to the Commission. CENELEC appears also to have started this practice, whereas ETSI has not. The decision usually takes 6-8 weeks, but in some cases is taking several months. In order

to bring more coherence and certainty into this process, it should be considered as a good practice that all the European standardisation bodies should communicate the acceptance (with possible reservations)/refusal of the mandate to the Commission.

- The acceptance of the standardisation mandate begins the standstill period, as specified in Article 7.1 of Directive 98/34/EC. From this moment the national standardisation bodies do not take "any action which could prejudice the harmonisation intended".
- The acceptance of a mandate should lead to the submission of a work programme, even if the mandate does not explicitly ask for a programme. Such a work programme should facilitate the monitoring of the execution of the mandate.
- A mandate sent to the three European standardisation bodies supposes that either a common response or an explicit response from each of the three bodies will be given on the action to be taken by them, even if one of the European standardisation bodies takes the view that it is not concerned. It will be useful to spell out in the reply the detail for the "cooperation modes" applied between the European standardisation bodies for the mandate in question.
- In the event of refusal, it will, in the first instance, be for the Commission's services, together with the European standardisation body concerned, to analyse the situation and find a solution. In a second step the Standing Committee should be consulted.
- The withdrawal of a mandate by the Commission must be subject to a consultation with the Standing Committee.

5.3 Beginning of work

In principle, the programming and standardisation work only start after the acceptance of the mandate. In certain cases work only starts when there is an agreement on financing between the European standardisation bodies and the Commission. The latter condition can in practice lead to a considerable delay in the standardisation work. Therefore, the European standardisation bodies can request that the financing of work already begins before the conclusion of the contract, however not before the receipt of the request by the Commission. The decision whether to accept such a request lies with the Commission and financing is only confirmed once a contract is signed by both parties.

Recommendations G

1. *Enhanced consultation of the European standardisation bodies during the preparation of the mandate should make it possible to speed up acceptance of this mandate and the beginning of work.*
2. *The possibilities of forwarding mandates sooner to the European standardisation bodies must be examined. Direct processing of the comments and the use of electronic means can accelerate its acceptance by them.*
3. *It should become practice that the European standardisation bodies communicate the acceptance of the mandate (with possible reservations) to the Commission.*
4. *The acceptance of a mandate should give rise to the submission of a work programme which will form the basis of the commitment of the European standardisation bodies and which will allow monitoring of the mandate.*
5. *The negotiations on the possible financing of standardisation work should not delay the initiation of this work. Where appropriate, negotiations on the possible financing of standardisation work should start as early as possible in order to avoid potential delays in the execution of the work.*

Annex 1 - Basic documents laying down the concept of a mandate

1. Directive 98/34/EC

1.1 Article 6(3), first indent

"The Committee.... may in this connection propose in particular that the Commission request the European standards institutions to draw up a European standard within a given time limit..."

1.2 Article 6(4)(d)

"The Committee must be consulted by the Commission... on the requests to the standards institutions referred to in the first indent of paragraph 3..."

2. Commission/European standardisation bodies **General guidelines on cooperation of 28 March 2003 (OJ C 91 of 16 April 2003)**

Point 5 second indent "...the European standards organisations expect the European Commission and EFTA to make use of European standards where they are appropriate in support of European regulations and other policies, and continue to pursue a policy of broader use of standards".

3. Council Resolution of 7 May 1985 (OJ C 136 of 4.6.85)

3.1 Annex II - Second fundamental principle on which the New Approach is based:

" the task of drawing up the technical specifications needed for the production and placing on the market of products conforming to the essential requirements established by the Directives... is entrusted to organisations competent in the standardisation area."

3.2 Annex II, paragraph 9

"The quality of harmonised standards must be ensured by standardisation mandates, conferred by the Commission, the execution of which must conform to the general guidelines which have been the subject of agreement between the Commission and the European standardisation organisations."

4. Council Resolution of 18 June 1992

Point 17 "The Council considers that the use of European standards should be further encouraged... as a technical basis in support of legislation, in particular in defining technical specifications for products and services... to be used in other areas falling within the scope of *European* legislation."

5. Decision No 768/2008/EC

" harmonised standard" shall mean a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of a request made by the Commission in accordance with Article 6 of that Directive"

Annex 2 - Template mandate with typical clauses

The structure of a mandate should be as follows:

- 1. Title**
- 2. Objective**
- 3. Policy and/or legal framework**
- 4. Description of the mandated work**
- 5. Execution of the mandate**
- 6. Organisations to be involved**

1. Title

This should contain the key elements of the description of the mandate:

1. Whether it is a standardisation, programming or study mandate
2. To which European standardisation body (-ies) it is addressed
3. Under which legislation/in which policy area it is to be developed (optional)
4. Which specific subject it covers

EXAMPLE:

1. Standardisation mandate...
2. ...to CEN and CENELEC...
3. ...under Directive 2007/47/EC relating to medical devices...
4. ...for standards concerning graphical symbols for use in the labelling of medical devices.

‘Standardisation mandate to CEN and CENELEC under Directive 2007/47/EC relating to medical devices for standards concerning graphical symbols for use in the labelling of medical devices.’

2. Objective

This section should contain a very brief summary of key purpose of the mandate.

EXAMPLE:

The Commission requests CEN to revise standard EN ISO 4254-1 “Agricultural machinery – Safety – Part 1: General requirements” in order to take account of hazards caused by the PTO drive-shaft between the tractor and the recipient machinery in line with the essential health and safety requirement 3.4.7 of Annex I to the Machinery Directive on the transmission of power between self-propelled machinery (or tractor) and recipient machinery.

3. Policy and/or legal framework

The mandate text should set out briefly and clearly (1.5 pages maximum) the background to the work, either in terms of European policy or legislation (or both).

The title of this section of the mandate should reflect the basis of which it is given (e.g. it should be ‘Legal framework’ in the case of a mandate for a New Approach directive).

4. Description of the mandated work

This is the key section of the mandate as it includes the detail of the request from the Commission to the European standardisation bodies. The text should clearly state what is expected in terms of:

- Deliverables – is the Commission requesting European standards or other deliverables, such as workshop agreements?
- Phasing of the work – is there to be a first phase in order to make cooperation arrangements between the European standardisation bodies or for programming work? Will this be followed by a standardisation phase? Will there be a period of scrutiny by the Commission services in between?
- Support to legislation – if this is the case, specific references to the legislation should be made, such as to the essential requirements of New Approach directives.

Some mandates may use an annex to set out in detail what is expected, in which case this section of the mandate generally states, ‘The European standardisation bodies are requested to carry out the standardisation programme in accordance with the Annex’. In such cases, it is particularly important to consider the level of detail.

5. Execution of the mandate

This section should contain certain key elements:

- The timetable for the mandated work, divided as necessary into the separate phases and the separate deliverables. This may be done in a tabular format if appropriate. It is important that the timetable is consulted with the European standardisation bodies in advance. The timetable should be given in the format ‘acceptance of mandate + x months’ rather than in the form of an actual date.
- Any interim reporting requirements. This would not usually be required for a short programming mandate, but is important for longer mandates. Again, the requirement should be in the form ‘every 12 months after acceptance of the mandate’.
- Any break in the work for consideration by the Commission services.
- A requirement to take into account other ongoing standardisation work, in particular to take into account the work of the recognised international standards organisations. An indication of technical committees/working groups to be potentially involved.
- A requirement where necessary to develop the standards in full cooperation with the Commission services.
- A clause requesting the European standardisation bodies to take the needs of SMEs into account when developing standards.

If it is a **standardisation mandate** requests **European standards**, then this statement must be included:

‘Acceptance by [add name of European standardisation body here] of this mandate starts the standstill period referred to in Article 7 of Directive 98/34/EC of 22 June 1998 (Of N° L 204/37 of 21 July 1998).’

If the mandate requests **European standards** from **CEN** and/or **CENELEC** then this text must be included:

‘The text of the European standards shall be delivered to the Commission in the three working languages of [CEN/CENELEC] (German, English and French).’

If the references of the standards produced are to be published in the Official Journal, then the following text must be included:

‘[CEN/CENELEC/ETSI] will provide the titles of the standards in all the official languages of the European Union.’

6. Organisations to be involved

The text must include the following statement:

‘As appropriate, CEN, CENELEC and ETSI will invite the representative organisations of consumers’ interests (ANEC), environmental protection (ECOS), workers (ETUI-REHS) and small and medium-size enterprises (NORMAPME) to take part in the standardisation work.’