

**Business Support
For
CEN Technical Committee 434**

1 Revision Table

Revised by	Date	Revision (version) number
P.G.L. Potgieser	July / August 2018	0.1
P.G.L. Potgieser - merged feedback from CEN, EMSFEI SubGroup 6 and Commission	5 September 2018	0.2
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39 **2 Introduction / reader guidance**

40 This document provides the Recommendations by SubGroup 6 of the European
41 MultiStakeholder Forum on e-Invoicing ('EMSFEI'), to be endorsed by the EMSFEI in its
42 meeting of October 2018.

43 To improve readability of the document, after a brief description of the background the
44 Recommendations will be listed. They will refer to additional information necessary for
45 their understanding, such as the rationale and/or arguments behind them that may be
46 given in a later section. Such additional information, where relevant, may also be given
47 in a 'text box'.

48 **3 Background**

49 In the EMSFEI meeting of 11 and 12 April 2018, a considerable amount of time was
50 dedicated to '*Intellectual Property Rights*' ('IPR')¹. IPR is interpreted here as related to
51 the purchase and use of the CEN EN 16931 documents², as mirrored in the questions in
52 the '*Survey on IPR issues for the European Standard on electronic invoicing*'³.

Q1: In your Member State, what is the pricing of IPR rights which allow the provision of services, tools or consultation that use the EN?

- Price amount (please state currency)
- Pricing model
- What rights are covered in this price?

53

54 As further clarified in the EMSFEI meeting, there are two different aspects with the IPR
55 of EN 16931: (i) the restricted access to the content (e.g. reading, lending and copying)
56 and (ii) the licensing requirements for derivative use: software developers and service
57 providers need to implement software compliant with the standard and may want to
58 have the right to embed portions of text from the EN into their products, services and
59 /or platforms (for example in error messages, user manuals, on line help, training
60 material, etc.), whereas invoice users are facing the replication of the text segments
61 from the EN in administrative correspondence.

62 The need for clarification on the IPR has become clear during the last months in the
63 development period of the EN, where stakeholders started approaching their National
64 Standardization Body (NSB) to explore the purchase of the EN once it would become
65 available. Sharing experiences, they found a lot of differences in prices, licensing

¹ <https://ec.europa.eu/cefdigital/wiki/pages/viewpage.action?pageId=59198416>

² CEN/TC 434 developed EN 16931-1 (the European standard on electronic invoicing) and a set of 8 ancillary deliverables (the list of syntaxes TS 16931-2, the syntax bindings TS 16931-3, divided in 4 subparts, a guideline on transport TR 16931-4, a guideline on use of extensions TR 16931-5 and the testing results TR 16931-6. The set of documents is collectively referenced in this document as "EN 16931"

³

<https://ec.europa.eu/cefdigital/wiki/display/EINVEXPERT/Survey+on+IPR+issues+for+the+European+Standard+on+electronic+invoicing> or <https://ec.europa.eu/cefdigital/wiki/pages/viewpage.action?pageId=52608474>

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66 conditions, etc. amongst the NSB's⁴.

67 The CEN answer⁵ to a letter⁶ of the Commission, as well as a document⁷ (see note on the
68 right) that was made available to the EMSFEI participants, did not yet provide
69 satisfactory clarification. The resulting situation
70 seems a bit confusing, largely due to many
71 perceived parallel and seemingly not related (see
72 6.4.5) (and sometimes poorly documented)
73 activities⁸, in combination with unfamiliarity with
74 the subject and insufficient information exchange.

Note: the Chairperson of the EMSFEI acknowledged the remark of the CEN representative on the fact that the document had been in review for four weeks as a fair point. The fact that it triggered no questions whatsoever indeed seems to mirror a problem in EMSFEI procedures. See paragraph 6.3.2.1

75 Upon closer examination, in fact two '*dimensions*'
76 seem to emerge:

77 1) Clarity must be obtained specifically regarding the IPR for EN 16931 and its pricing
78 and licensing conditions as soon as possible, because the EN (specifically EN 16931-1
79 and TS 16931-2) is needed for the implementations for Directive 2014/55/EU and the
80 deadline it mentions is approaching fast. This is currently⁹ a running process, where
81 CEN has taken initiatives, with
82 actions on behalf of CEN and on
83 behalf of the Commission, that is
84 supposed to lead to a proposal for
85 a solution. (It is unknown if there
86 are (still) individual actions in
87 Member States).

Note: in its decision to accept the Standardisation Request following from Directive 2014/55/EU, CEN already informed its members (the NSB's) on the deep concerns about the non-free availability of the standards from the organizations that have been consulted by the Commission when drafting the standardisation request where, on the contrary, the Chairperson of the EMSFEI stated in the meeting '*that the issue of costs was never raised as a problem by the Member States in the negotiations*'. As both entities (note that NSB's and Member States are not the same entities) can be assumed to be right, this indeed seems to mirror a problem in information exchange (network). See paragraph 6.3.2

88 The IPR situation around EN
89 16931 is considered a unique
90 situation^{10,11}.

91 The CEN proposal is supposed to
92 solve the matter for the EN 16931

⁴ CEN members are in fact in competition when selling standards and CEN has neither the right to sell/distribute the standards nor influences how price and licensing is decided by NSBs.

⁵ LA-2017072601 - 27/7/2017

⁶ Ref. Ares(2017)2979663 - 14/06/2017

⁷

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/20180221%20Clarification%20on%20IPR%20and%20CPR%200.3.pdf?api=v2>

⁸ Example:

<https://ec.europa.eu/cefdigital/wiki/display/EINVEXPERT/Situation+analysis+on+the+maintenance%2C+evolution+and+implementation+of+the+European+standard+on+electronic+invoicing> with document 20171002_EN_situation analysis_v2.2 and its follow-up ?

⁹ August 2018

¹⁰ See AGS summary in 21 October 2016 EMSFEI meeting, '20161021 Summary of AGS.ppt'

¹¹ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure makes EN standards mandatory for new power recharging points for motor vehicles and for hydrogen refuelling points for motor vehicles. This does not concern ICT standards or re-use of standards-text in implementations but similar IPR issues could exist. This is not elaborated here.

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93 (only). This SG6 document will NOT concern the contents of the proposal, but may
94 provide Recommendations to help prevent a similar situation from occurring in the
95 future.

96 From a recent e-mail exchange¹² at the time of writing of version 0.1 of the document it
97 was learnt that the Commission would refrain from the action points following from the
98 discussion at the EMSFEI meeting of 11/12 April 2018, given the anticipation on the
99 outcome of the proposal made by CEN. This proposal is expected to also provide the
100 answers on e.g. questions about legal clarity.

101 2) The results of the consultation on the proposed SGs topics for the upcoming period of
102 the EMSFEI showed that 'IPR' scored high on the list. The EMSFEI decided to establish
103 SG6 'Business support to CEN/TC434', with the assignment: *'This subgroup objective is
104 to work on interactions between business logic and political discussions and monitor
105 future IPR issues'*, where clearly the intention is *'to prevent this matter to be happening
106 again in the future'*.

107 Following the adopted way of working of the EMSFEI, SG6 will give Recommendations
108 to be endorsed and - where applicable - followed up by the EMSFEI participants.

109 Note that:

- 110 • SG6 will also provide Recommendations plus reminders to help realise what is
111 mentioned under 'dimension' 1).
- 112 • SG6 may provide Recommendations aimed 'beyond the EMSFEI', that could be
113 indirectly carried out through the EMSFEI members, i.e. to NSB's.

114 **4 Recommendations**

115 In its discussion on scoping the assignment, the SG6 came to the conclusion that it
116 should structure its work along the lines of observations (*'What is needed'*, *'What is in
117 fact happening'* and *'Why the difference ?'*), followed by Recommendations (*'How to get
118 rid of the difference'*). Based on these observations, the first feelings were that the
119 Recommendations would certainly encompass: *'Adapt procedure'*, *'Make procedures
120 known'* and *'Make legislation known'*.

121 The next two paragraphs list the Recommendation, resulting from elaboration of the
122 observations and (cross-checking against) existing documentation; for each
123 Recommendation, on the subsequent indented text-level it is briefly indicated what the
124 Recommendation is supposed to solve. If applicable, there will follow a reference to one
125 or more related sections in this document.

126 The Recommendations are presented with some reluctance and reservation;
127 documentation shows that several of the topics they relate to have been brought to the
128 table of the EMSFEI already years ago (!, see 6.3.2), where even agreements have been
129 made on actions. As the below Recommendations need yet again to be given follow-up
130 and even in unison, this may prove to be an even greater challenge than before and it is
131 felt that the chances for success are fairly little (also in view of the anticipated
132 remaining life-time of the EMSFEI) unless changes are properly governed.

¹² Thu 16-Aug-18 18:02, Alis-Irena.RIVIERE-OSIPOV@ec.europa.eu

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133 Notes:

- 134 • The sequence in which the Recommendations are listed does not indicate any
135 priority;
- 136 • The Recommendations do not give detailed implementation scenarios (yet);
137 although ideas on these may exist, further tangible elaboration is postponed until
138 after decision making;
- 139 • The validity of the Recommendations in general is not necessarily limited to the
140 EMSFEI.

141 **4.1 On ... interactions between business logic and political discussions**

142 **4.1.1 For EMSFEI (participants)**

- 143 • Ensure proper positioning and 'staffing' of National MultiStakeholder Forum
144 (NMSF)
 - 145 ○ This will ensure proper level of interaction with and within Member State and enough
146 authority of the voice to and from the Member State.
- 147 • Ensure knowledge of representative in EMSFEI, and where necessary NMSF
 - 148 ○ No longer discussions in the EMSFEI on competing standardisation mechanisms that are
149 not preferred in existing Regulations or conform Commission Decisions.
 - 150 ○ No longer discussions in the EMSFEI on perceived solutions that in reality are not viable,
151 as they e.g. are not compliant with e.g. competition law.
- 152 • Ensure proper interaction / links between on the one hand the NMSF and on the
153 other hand the TC 434 National Mirror Committee ('NC') in individual Member
154 States¹³.
 - 155 ○ Although the EMSFEI membership is not equal to the TC 434 membership, the
156 constituency of the EMSFEI will be able to be aware of, and eventually participate
157 properly in, TC 434 work and decisionmaking where constituencies need not necessarily
158 be merged. The matter in TC 434 will then no longer be 'a surprise' for EMSFEI
159 constituents (and v.v.).

160 **4.1.2 For CEN and its members, the NSB's**

- 161 • Take action
 - 162 ○ Discussion on IPR / uncertainty on uptake may hamper participation in development -
163 and cause move to other organisations / mechanisms. See 6.2.2.6
 - 164 ○ Start dialogues with stakeholders for e-Business standards - pay note and provide
165 adequate follow-up to signals from CEN BT.

166 **4.1.3 For European Commission**

- 167 • Provide clarity on access-points / contacts. The authority of CEF does not equal
168 the authority of the responsible DG('s).
- 169 • Pay more attention to deliverables / suggestions / hints from the field and react
170 properly to perceived hindrances.
 - 171 ○ Examples in 6.3.2
 - 172 ○ Help remove uncertainty

¹³ There is no more "NC" 434 in France. Therefore it is not possible to ensure a link between the NMSF and the NC/TC 434. This is in fact a problem that needs to be solved by the French NSO, AFNOR, otherwise the concept of European Standardisation, that Regulation 1025/2012 builds on, is '*hollowed out from the inside*'. A work-around could be found in allowing country representatives to the EMSFEI to participate as observers at TC434 meetings; that is NOT elaborated here.

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- 173 • Take action on Consideration¹⁴, Letter¹⁵, Recommendation¹⁶ as reviewed by the
174 EMSFEI, as Regulation 1025/2012 is NOT applicable to standards that are not
175 applied on a voluntary basis and the situation at hand will return in future.
- 176 • Provide mechanism for questions and ensure shortest possible response times;
177 ○ Only building on EMSFEI meetings 2 or 3 times a year delays the process; it also does
178 NOT give enough time for proper discussions with, and consultations of, the
179 constituencies.
- 180 • Ensure availability of concise information (for a.o. EMSFEI participants) about
181 the relevant topics in their context. (DSM Objectives, EMSFEI importance and
182 role, its relation to CEN / TC434, TC 440, to OpenPeppol and CEF).
183 ○ Since the inception of the EMSFEI, frequent changes in the Member State representatives
184 could be observed. Practically the most involved representatives, taking their
185 (important) part in the EMSFEI works, form a stable and limited size 'hard core'. For the
186 new participants in the EMSFEI it is difficult to find the right information to get their
187 knowledge up to the required level; hampering involvement.
- 188 • Maintain list of action points and results, (ensure) report(ing) on status and
189 progress
190 ○ See 6.3.2.2
- 191 • Broaden the scope of the work to enable inclusion of automated 'four way
192 match'. See section '3.2 *The invoice in business processes*' in the document
193 '*Relevant background information and details for the understanding and envisaged*
194 *further uptake of the 'Recommendations on the use of a semantic data model to*
195 *support Interoperability for Electronic Invoicing*'¹⁷

196 **4.2 On monitor future IPR issues**

197 **4.2.1 For CEN and its members, the NSB's**

- 198 • Take action on Consideration, Letter, Recommendation (references above) as
199 reviewed by the EMSFEI, as Regulation 1025/2012 is NOT applicable to
200 standards that are not applied on a voluntary basis and the situation at hand will
201 return in future.
202 ○ Discussion on IPR/ uncertainty on uptake may hamper participation in development -
203 and cause move to other organisations / mechanisms. See 6.2.2.6
- 204 • Start dialogues with stakeholders for e-Business standards¹⁸ - pay note and
205 provide adequate follow-up to signals from CEN BT.

14

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/Considerations%2020180221%20B0.3.pdf?api=v2>

15

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/Letter%2020180128%20L0.3.pdf?api=v2>

16

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/Recommendation%2020180128%20R0.2.pdf?api=v2>

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<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892821/20160216%20Document%202.0%20Clean%20%282%29.pdf?api=v2>

¹⁸ <https://www.cen.eu/work/areas/ICT/eBusiness/Pages/default.aspx> and <https://www.nen.nl/CEN-eBusiness-Coordination-Group-1.htm>

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206 4.2.2 For European Commission

- 207 • Pay more attention to deliverables / suggestions / hints from the field and react
208 properly to perceived hindrances.
 - 209 ○ Examples in 6.3.2
 - 210 ○ Help remove uncertainty
- 211 • Take action on Consideration¹⁹, Letter²⁰, Recommendation²¹ as reviewed by the
212 EMSFEI, as Regulation 1025/2012 is NOT applicable to standards that are not
213 applied on a voluntary basis and the situation at hand will return in future.
 - 214 ○ The solution that CEN initiated for EN 16931 cannot, see the remarks on European
215 Standardisation in Regulation 1025/2012, be seen as a general solution for a
216 shortcoming in this Regulation.

217 5 Definitions

218 This chapter provides definitions and further (generic) background descriptions that
219 are considered relevant to be able to gain the proper understanding from this
220 document.

221 5.1 Interoperability

222 In current business scenarios²², 'interoperability' represents the most complete form of
223 collaboration, enabling companies not only to interact with each other electronically but
224 also to interact as if they were a single 'virtual organization'. To reach this goal,
225 interoperability is not intended to be bounded at a technical level, but also at the
226 business and process level, including for example processes related to the relationship
227 between suppliers and customers and to cooperation with business partners,
228 commercial counterparties and financial institutions.

229 The goal of interoperability is to allow information to be presented in a consistent
230 manner between business systems, regardless of technology, application or platform. It
231 thus provides organisations with the ability to transfer and use information across
232 multiple technologies and systems by creating commonality in the way that business
233 systems share information and processes across organisational boundaries.

234 A short definition, containing all essentials from 'interoperability', in one sentence is:

235 **Interoperability:** *'running business processes flawlessly across organisational*
236 *boundaries'*.

237 Where:

238 *'Interoperability is achieved by understanding how business processes of different*
239 *organisations can interconnect, developing the standards to support these*

19

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/Considerations%2020180221%20B0.3.pdf?api=v2>

20

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/Letter%2020180128%20L0.3.pdf?api=v2>

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<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892981/Recommendation%2020180128%20R0.2.pdf?api=v2>

²² See also <https://ec.europa.eu/digital-single-market/en/policies/ict-and-standardisation>

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240 *business processes efficiently and by specifying the semantics of messages*
 241 *exchanged between the organizations to support these business processes in a*
 242 *scalable way’.*

243 Note that 'interoperability' is a cornerstone of “Electronic Business” (‘e-Business’),
 244 which is far more than “Electronic Commerce” (e-Commerce).

245 e-Commerce describes the world of commercial transactions between ‘Business’ and
 246 ‘Consumer’.

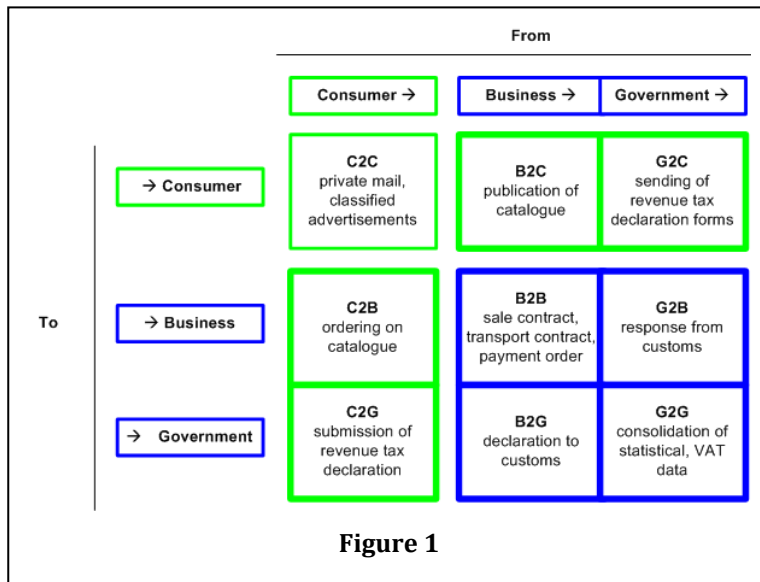


Figure 1

262

e-Business has a much broader scope: transactions that are facilitated by means of electronic transfer of information. Figure 1 gives a schematic indication of this playing field.²³

In a heterogeneous business environment actors do not need to know in detail how another actor operates; however the existence of business agreements that set out a common collaborative way of working together is vital.

263 Interoperability can be identified on three different levels:

- 264 1. Business and organisational interoperability
- 265 2. Process interoperability
- 266 3. Technical interoperability

267 To understand what '*... the ability to transfer and use information across multiple*
 268 *technologies and systems ...'* (as schematically indicated in Figure 2) means, the
 269 following:

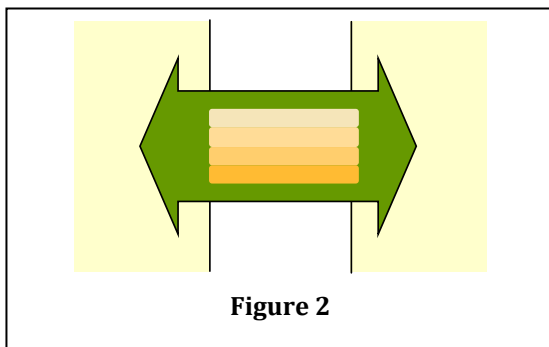


Figure 2

'Achieving Interoperability' in principle boils down to the making of business agreements. These agreements can be distinguished in a number of individual 'layers'. The entities between which the agreements must be made can be different for each layer, but (in general) the agreements need to encompass all layers and need to be made in a coherent fashion.

Figure 3 shows the individual layers as

²³ The OECD is considering the following definition of e-Business: “(automated) business processes (both intra- and inter-firm) over computer mediated networks; electronic business processes should integrate tasks and extend beyond a stand-alone or individual application”.

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279 recognised and further described below. For sake of completeness it is shown, that
 280 usually there is a 'Political Context' within which the agreements are made. This
 281 situation is especially relevant for Europe, where the 'political context' is given by the
 282 'Digital Single Market' objective²⁴.

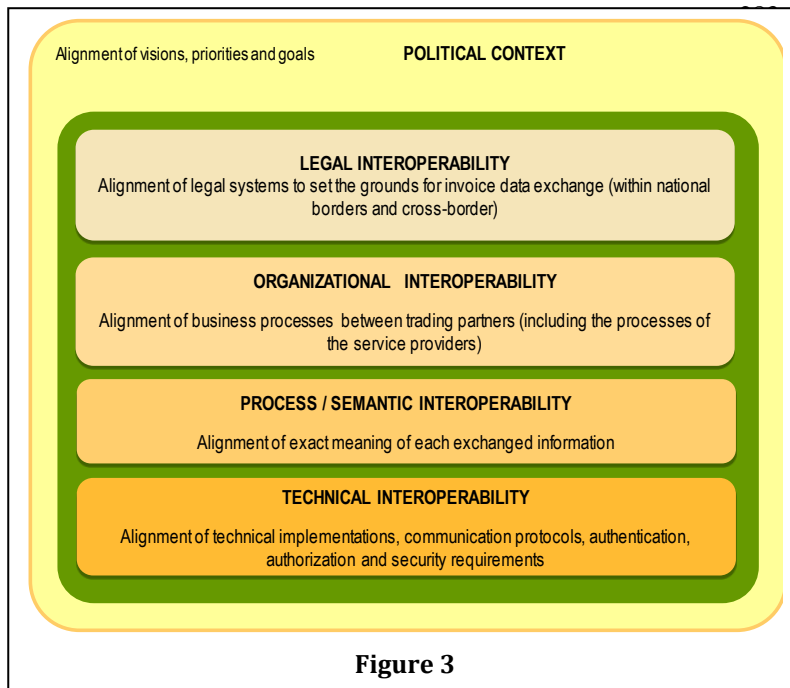


Figure 3 is derived from the document 'Draft document as basis for EIF 2.0'²⁵.

It shows, within the green square, top-down the following layers:

Legal Interoperability: Legal interoperability refers to ensuring alignment with legal requirements (e.g. data integrity and protection) both in domestic and in the cross-border context, ensuring fulfilment of European Union directives, national legislations, legal risks, etc.

301 **Organizational interoperability:** (This layer presumes that the parties involved
 302 indeed want to do business with each other).

303 Organisational (or 'business') interoperability includes all the tools and instruments
 304 required to enable the business integration of actors and roles to facilitate information
 305 exchange. Business and organisational interoperability has the objective of making
 306 services available, easily identifiable, accessible and user-oriented between trading
 307 parties and within the business community generally.

308 To reach this goal, all parties must agree on reciprocal information needs and on shared
 309 contractual rules to ensure it occurs safely, with minimal overhead, on an ongoing basis,
 310 and on the basis of well constructed plans and their implementation.

311 **Process and semantic interoperability:** this layer consists of making it possible to
 312 automatically process information exchanged between all parties consistently and
 313 accurately, in order to produce useful results as defined by the end-users of both
 314 business processes.

315 Process interoperability includes discovery (acquiring relevant information) and
 316 collaboration aspects (how to work together), including workflow and decision-making
 317 transactions. This often requires alignment of business processes as well as operational
 318 synchronisation of collaboration data.

²⁴ <https://ec.europa.eu/digital-single-market/en/economy-society>

²⁵ <http://ec.europa.eu/idabc/servlets/Docb0db.pdf?id=31597>

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319 To achieve this level of interoperability, parties must agree on or have available to them
 320 a common information exchange reference model. The content of information
 321 exchanges must be unambiguously defined, to ensure that what is sent is correctly
 322 understood from the receiver.

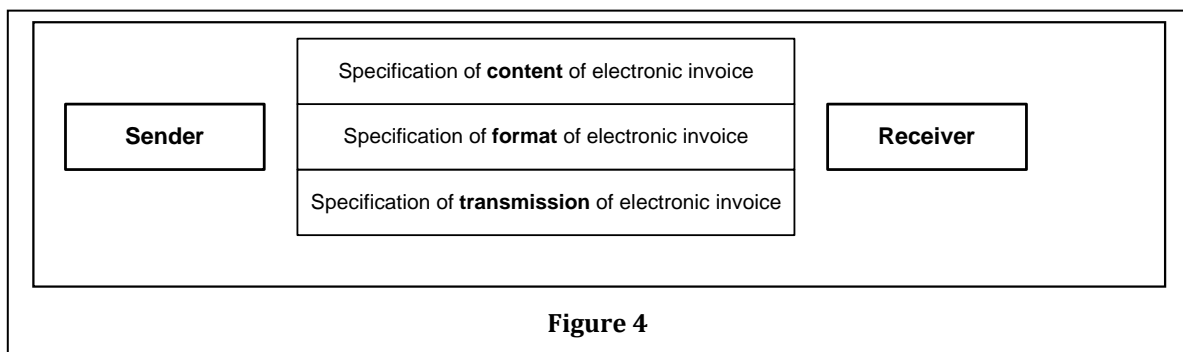
323 **Technical interoperability:** the lowest layer is technical interoperability, which
 324 consists of the common methods and shared services for the communication, storage,
 325 processing and presentation of data.

326 Technical Interoperability is usually associated mainly with applications and/or
 327 hardware and network components, referring to systems and platforms that enable
 328 machine-to-machine or application-to-application communication to take place.

329 This aspect of technical interoperability – interoperability at the 'protocol layer' – is
 330 mainly focused on enabling electronic communication between remote devices.

331 However, to ensure full interoperability, an additional element to be considered is the
 332 'Syntactical Interoperability', usually associated with defining shared data elements. In
 333 fact, to ensure full technical interoperability the messages transferred by
 334 communication protocols need to have a shared syntax and formats.

335 Combined together, these different topics include all the technical issues involved in
 336 linking computer systems, applications, and services such as technical foundations for a
 337 secure environment, compatible technical standards and a common framework (e.g.
 338 open interfaces, interconnection services, data integration, middleware, data
 339 presentation and exchange, accessibility and security services etc.).



340 In the exchange of an (e-)invoice between a sender and a receiver, termed the trading
 341 parties, they (or their service providers) need to be able to agree on a number of key
 342 aspects, the most important being shown in the centre of diagram in Figure 4.

343 At the first level (top), the data structure of the '**content**' is described by a methodology
 344 or industry practice and is often expressed in a so-called 'Semantic Data Model', which
 345 can be defined here as a structured and logically interrelated set of terms and meanings
 346 required to meet the business requirements in a commercial context.

347 At the second level, the physical representation of this content in a structured electronic
 348 message is termed the '**format**'. Defining 'data element' here as: Smallest named item of
 349 data that conveys meaningful information or condenses lengthy description into a short

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350 code, a format is the representation of the content carried²⁶ in data elements in a
351 machine-readable form, which is structured and where the data elements are logically
352 related to each other (and potentially to other data elements outside the invoice); it will
353 usually be expressed in a syntax. Syntax is the machine readable 'language' or 'dialect'
354 used to represent the data elements. Correct deployment of the 'format' allows for
355 automated processing of the 'content'.

356 At the third level (bottom), **transmission** refers to the aspects of delivery or making
357 available the e-invoice from sender to receiver and includes the network modality, the
358 transport protocol, addressing and routing and the means to support the proof of
359 delivery of the e-invoice.

360 **5.2 What is 'standardisation'**

361 In the European context, the meaning of the word 'standardisation' is not always
362 immediately clear. To show this: the European Commission uses in one of its
363 documents²⁷ in the chapter '**7: Standardisation Agreements**' a description of the
364 purpose of 'standardisation':

365 *"Standardisation agreements have as their primary objective the definition of technical or*
366 *quality requirements with which current or future products, production processes, services*
367 *or methods may comply. Standardisation agreements can cover various issues, such as*
368 *standardisation of different grades or sizes of a particular product or technical*
369 *specifications in product or services markets where compatibility and interoperability*
370 *with other products or systems is essential"*

371 and uses the following definition:

372 *"Standardisation can take different forms, ranging from the adoption of consensus based*
373 *standards by the recognised European or national standards bodies, through consortia*
374 *and fora, to agreements between independent companies".*

375 The EU supports an effective and coherent standardisation framework, which ensures
376 that high quality standards are developed in a timely manner. The European
377 Commission issues standardisation requests and supports financially the work of
378 European Standardisation Organisations: European Telecommunications Standards
379 Institute (ETSI), European Committee for Standardisation (CEN), European Committee
380 for Electrotechnical Standardization (CENELEC), but does not interfere with the
381 standardisation setting conducted by industry or National Standardisation
382 Organisations.

383 **6 Annexes**

384 **6.1 CEN**

385 This paragraph provides basic information on the 'European Committee for
386 Standardization - CEN²⁸', as needed to facilitate understanding of the Recommendations
387 in this document.

²⁶ Example: is a date expressed in DDMMYYYY or MMDDYYYY ...

²⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF>

²⁸ <https://boss.cen.eu/TechnicalStructures/Pages/default.aspx>

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388 European standardisation is organised by and for the stakeholders concerned based on
389 national (or 'indirect') representation (the European Committee for Standardisation
390 (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC))
391 and direct participation (the European Telecommunications Standards Institute
392 (ETSI))²⁹.

393 CEN's core business is the development of standards that meet the needs of the market.
394 Standardization is performed in a 'bottom-up' approach, thereby ensuring the market
395 relevance of the resulting deliverables.

396 That CEN work is governed by the Technical Board (BT), which monitors and steers all
397 of the standardization activities and has full responsibility for the timely execution of
398 CEN's work programme. The preparation of the standards belongs to the remit of some
399 400 Technical Committees (TCs) that each have their own field of operation (scope)
401 within which a work programme of identified standards is developed and executed. TCs
402 work on the basis of national participation by the CEN Members (i.e. 'indirect
403 participation', see 6.1.3.2), where delegates represent their respective national point of
404 view. This principle allows the TCs to take balanced decisions that reflect a wide
405 consensus. The real standards development, though, is undertaken by working groups
406 (WGs) where experts, appointed by the CEN Members but speaking in a personal
407 capacity, come together and develop a draft that will become the future standard. This
408 reflects an embedded principle of 'direct participation' (see 6.1.3.1) in the
409 standardization activities. Note that Working Groups members speak in a personal
409 capacity but should be aware of national positions and adhere to them.

410 The CEN-CENELEC Management Centre (CCMC), located in Brussels, is in charge of the
411 daily operations, coordination and promotion of all CEN and CENELEC activities. CCMC
412 is responsible for handling the tasks assigned to it by both CEN and CENELEC General
413 Assemblies, the Administrative Boards and the Technical Boards. CCMC is also
414 responsible for correspondence and liaison with the services of the European
415 Commission and the EFTA Secretariat.

416 **6.1.1 CEN Deliverables**

417 CEN deliverables³⁰, differing in the levels of transparency, consensus and approval
418 required before issue, offer flexible means to meet market needs for technical
419 requirements and information.

420 These deliverables are:

- 421 • The European Standard³¹ (**EN**), leading to full implementation, as national
422 standard, Europe-wide, which may also serve the European regulatory purposes
423 of the New Approach;
- 424 • The Technical Specification (**CEN/TS**), that serves as normative document in
425 areas where the actual state of the art is not yet sufficiently stable for a European
426 Standard;
- 427 • The Technical Report (**CEN/TR**), for information and transfer of knowledge;

²⁹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:316:0012:0033:EN:PDF>

³⁰ <https://boss.cen.eu/reference%20material/Guidancedoc/Pages/Del.aspx>

³¹ <https://www.cen.eu/work/products/ENs/Pages/default.aspx>

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- 428 • The CEN Workshop Agreement (**CWA**), which aims at bringing about consensual
429 agreements based on deliberations of open Workshops with unrestricted direct
430 representation of interested parties;
431 • The Guide (**CEN Guide**), which gives information about standardization
432 principles and policies and guidance to standards writers.

433 These products are, apart from the CWA which has direct industry representation in
434 Workshops, worked out in the community of the CEN Members, who in turn consult
435 their interested parties, usually via the means of national mirror committees ('NC's').

436 The CEN Technical Committees may establish EN, CEN/TS and/or CEN/TR.

437 CEN Guides result from a decision of the BT, CA or AG and are developed by a body
438 appointed by the BT, CA or AG. This is not further explained here.

439 **6.1.2 Organisation for the work**

440 **CEN Technical Committee³²**

441 Technical Committees (TC) are established by the Technical Board (BT), to which they
442 report, with precise titles and scopes, to prepare CEN deliverables.

443 A TC:

- 444 • Establishes and agrees on its programme of work with precise title and scope of
445 each project in accordance with its agreed business plans, if available.
446 • Follows up and ensures the achievement/delivery of the work programme and in
447 accordance with the CEN strategic aim to develop standards "in production times
448 needed by the market".
449 • Takes into account any ISO/IEC work coming within its scope, together with such
450 data as may be supplied by members and by other relevant international
451 organizations, and work on related subjects in any other Technical Committees
452 (TC).
453 • Establishes, when necessary, an Editing Committee once work starts.
454 • Remains formally responsible should questions of amendment and
455 interpretation arise pending the next periodic review of those standards it has
456 produced.
457 • Supplies drafts in the reference language version for processing at the different
458 stages (CEN enquiry, formal vote (when applicable) and publication).
459 • Reviews all ENs within its responsibility at least every 5 years. In addition,
460 reviews other deliverables in accordance with the CEN Internal Regulations Part
461 2.

462 A TC operates following the mechanism of 'indirect representation'.

463 **CEN Technical Committee Working Group³³**

³² <https://boss.cen.eu/TechnicalStructures/Pages/TC.aspx>

³³ <https://boss.cen.eu/TechnicalStructures/Pages/TCWG.aspx>

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464 Group, established by a Technical Committee (TC) or Subcommittee (SC), that develops
 465 (a) draft deliverable(s) in the context of the scope and work programme of the parent
 466 body. It reports to its parent body.

467 It works within clearly defined policy guidelines from its parent body. On completion of
 468 its task, the Working Group (WG) is disbanded by decision of the parent body.

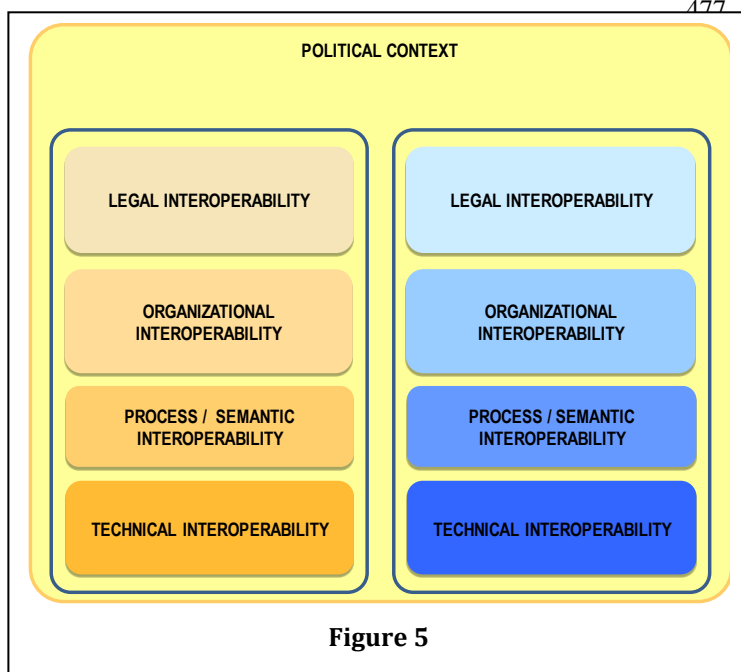
469 The WG:

- 470 • drafts documents in accordance with the work specifications, guidelines and
 471 time schedule provided by the parent body and in accordance with CEN drafting
 472 rules.

473 A TC-WG operates following the mechanism of 'direct representation'.

474 6.1.3 Representation models

475 This paragraph describes the relevant 'representation models' conceptually. For
 476 simplification it is assumed that the actors are in one and the same 'legal' and 'political'



environment, as in Europe. Figure 5 schematically indicates the situation if that is not the case, e.g. actors in two different Member States of the European Union. The principle of 'making business agreements' remains the same, but can be more complicated due to the differences in the 'legal layer'.

'Legal' refers to laws and regulation defined by public bodies, where business actors cannot have (direct) influence.

6.1.3.1 Direct representation

'Direct representation' in an entity (C) means that all parties

495 in the community that participate in (C) are represented by sending each individually a
 496 representative. The basics of this concept is schematically shown in Figure 6 for
 497 illustration. In the entity (C) each country³⁴ has its own representative.

498 The concept 'direct representation' is further elaborated for the CEN context³⁵.

499 CEN knows the concept of the 'Workshop'. Deliverables of such CEN Workshop are
 500 called 'Workshop Agreements'. *'A CEN Workshop Agreement (CWA) is a document
 501 published by CEN in at least one of the CEN three official languages.'*

³⁴ Flags are used merely for illustration in this document - no further meaning must be attached to that.

³⁵ <http://www.cencenelec.eu/Pages/default.aspx>

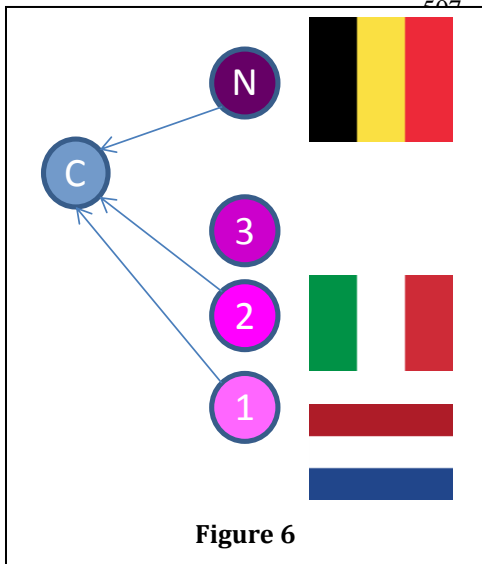
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502 A CWA is an agreement developed and approved in a CEN Workshop; the latter is open
 503 to the direct participation of anyone with an interest in the development of the
 504 agreement.'

505 An essential characteristic of the development of a CWA is, that discussions and decision
 506 making only takes place amongst the participants in the Workshop.



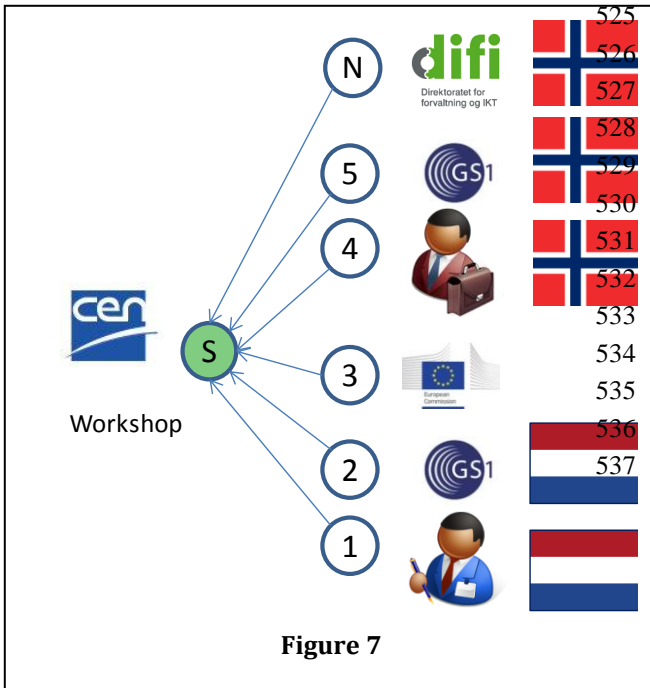
Participants can have different 'calibres' - an individual SME can participate equally well as a representative from a large multinational organisation. The weight of the votes in the decision making is equal.

Figure 7 shows, as an example, a simplified CEN workshop with only participants from the Netherlands and Norway. The Norwegian participants³⁶ are resp. (a representative of) DIFI, GS1 Norway and an SME. The Dutch participants are (a representative of) GS1 Nederland and (another) SME.

Usually, a representative of the European Commission participates in a CEN Workshop, especially in the context of EU objectives, which is

522 shown for completeness.

523 Figure 7 hence schematically indicates individual participants, representatives of
 524 company or multinational organisations and representatives of the public sector.



525 Discussions and decisionmaking
 526 takes place in the Workshop itself,
 527 with the aim to reach consensus. The
 528 consequences are, as implied by this
 529 fictive example, that the international
 530 organisation GS1 needs to take care
 531 internally that its representatives in
 532 the Workshop are aligned. The
 533 Workshop is not the place to have
 534 'GS1-internal discussions'. The figure
 535 also shows a weakness of the
 536 workshop concept: an 'unbalanced
 537 situation' may result.

³⁶ Use of names for illustrative purposes only

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538 In several occasions CEN Workshops have the preference of the European Commission
 539 for the development of specifications that serve as the basis of EU 'pilot projects'³⁷.

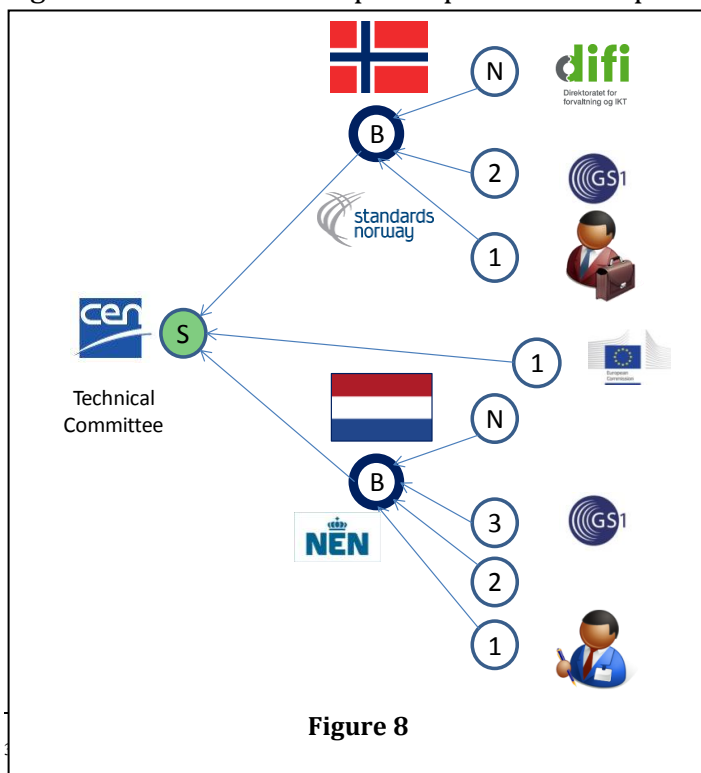
540 The problem of this approach will be clear: as the specifications have only been
 541 developed and agreed in a direct representation model amongst a limited number of
 542 participants – those who knew of the Workshop and wanted to dedicate effort to
 543 participate - who (as a group) do not necessarily reflect the needs and requirements of
 544 the entire playing field, it is not simply possible to use Workshop Agreements in an
 545 environment that is broader than the one originally represented by the participants in
 546 the workshop.

547 As these specifications (Workshop Agreements) carry the CEN logo and frequently are
 548 referred to as 'standards' and hence be confused with 'standard' as in 'European
 549 Standard'(See 5.2 and 6.1.1) difficult situations result:

- 550 • Lack of recognition or understanding of the problems of acceptance outside the
 551 original scope territory (represented by the original group of participants in the
 552 workshop) but still within the same community – the 'standard' can be
 553 experienced as imposed / the will of a minority.
- 554 • Lack of recognition or understanding of the problems of acceptance outside the
 555 original scope territory (represented by the original group of participants in the
 556 workshop) outside the original community. The 'standard' can be experienced
 557 as imposed / the will of a minority and become totally unsuitable.

558 6.1.3.2 Indirect representation

559 Figure 8 shows how the participation of the parties in the fictive example of Figure 7



would be in the development of a formal European Standard by a CEN TC. Such European Standard (abbreviated to 'EN') is usually developed and decided upon in a³⁸ 'Technical Committee'³⁹ (a 'Project Committee' once was an alternative; the concept is the same, the difference is in the framework - this is not elaborated here)

Essential differences between figure 7 and 8 are:

- The indirect participation
- The decision making.

Indirect participation means that

workshops – <http://www.cenbii.eu>

³⁸ This document limits itself to the description of the developments within CEN.

³⁹ <http://boss.cen.eu/TechnicalStructures/Pages/TC.aspx>

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576 interested stakeholders per EU Member State deliver their contribution in a National
577 Committee in each individual Member State ('NC', indicated as (B)) where the NSB of
578 the Member State concerned has the secretariat. From the participants in the NC a
579 chairman is elected plus a representative⁴⁰ to the CEN TC in which the work and
580 decision making takes place.

581 Some observations and characteristics:

- 582 • Processes tend to be slower using indirect participation - for contributions to
583 the work and/or decision making in a TC, its participants with the mandate of
584 the NC they represent will always have to get back to their constituencies in case
585 of choices that have not been foreseen in the mandate.
- 586 • Balloting on decisions in the TC encompasses all members of CEN - the NSB's,
587 also those who do not have an NC for the TC concerned. Advantage: broad
588 coverage and support for decisions by many stakeholders, grouped in many NC's.
589 Disadvantage: in order to obtain the required quality, it takes its time. This is a
590 distinguishing factor and essential element in the process to develop a European
591 Standard. Sometimes people like to shorten development time by taking a CWA
592 and offer it to a TC to adopt as EN. As described above, this process can usually
593 not be successful.
- 594 • Advantage of a Workshop is that only those who are in need of a solution could
595 participate - which is not necessarily equal to the group of ALL stakeholders in
596 that community.
- 597 • This document does not express opinions on the value of 'an agreement' for
598 those who use it, as compared to an EN, developed by CEN or ISO. Both can,
599 depending on the circumstances, equally well solve a business problem.

600 **6.1.4 Proposals for new work**

601 Proposals for new work can originate in e.g. a business community, but can also come
602 from a 'Standardisation Request'⁴¹ issued by the European Commission.

603 Proposals for new work⁴² are introduced as follows:

- 604 1. For new work not falling within the scope of an existing CEN/TC : '*New activity*
605 *field proposal*' form shall be used and submitted to CCMC;
- 606 2. For new work falling within a scope of an existing TC: '*New Work Item proposal*'
607 form shall be used and submitted to the concerned CEN/TC.

608 The first option is in principle not relevant for the situation at hand and will not be
609 elaborated here. The interested reader is referred to the CEN documentation on this for
610 which the link is given in the footnote.

611 One relevant observation needs to be given here, however:

612 In spite of the proposal, it is still determined if the proposed for new work falls within
613 the scope of an existing CEN/TC - such as to prevent proliferation or even duplication

⁴⁰ This representation may be 'dynamic', i.e. the NC appoints a representative to the TC that can be different for each TC meeting.

⁴¹ https://ec.europa.eu/growth/single-market/european-standards/requests_en

⁴² <https://boss.cen.eu/startingnewwork/propnewwork/pages/default.aspx>

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614 of work. If the proposed new work after all indeed does fall within the scope of an
615 existing CEN/TC, CCMC sends the proposal to the Secretariat of that CEN/TC and
616 informs the originator thereof. The TC addressed will provide the proper follow-up.

617 If the proposed work does not fall within the scope of an existing CEN/TC, CCMC
618 circulates the 'New activity field proposal' form to the Technical Board (BT) with a
619 proposal for decision, including in most cases, a proposal to create a new TC. BT
620 Members are requested to state explicitly, by means of the commenting field provided
621 in the BT balloting tool, whether or not they are committed to participate in the work.
622 If, after the ballot, the criteria for acceptance of the proposal are fulfilled, the proposed
623 BT Decision is adopted and the TC is created.

624 Such creation implies the creation of a corresponding NC by each of the (interested)
625 CEN Members - the NSB's. *This means that a TC (including the corresponding NC's) are*
626 *not established if the potentially interested in the constituency of the NSB are not*
627 *interested or if the NSB, for whatever reason, has not been able to connect the proper*
628 *audience of interested stakeholders.* This puts a responsibility on NSB's regarding
629 having a 'network' in (business) areas that they are not yet active in/for.

630 For work that is considered to fall within the scope of an existing TC, the 'New Work
631 Item proposal' form is sent to the Secretary of the relevant TC.

632 The TC Secretary considers whether the proposed new work item falls within the scope
633 of the TC. If the proposed new work item does not fall within the scope of the TC, the TC
634 refers the proposal to CCMC for reintroduction of the new work item using an
635 alternative route. If the proposed new work item falls within the scope of the TC, the TC
636 Secretary deals with the proposal in accordance with the guidance document '*Adoption*
637 *of new work in a CEN/TC*'⁴³. This information is not reproduced here. Crucial element
638 here is a ballot, implying a voting period.

639 After the voting period, the TC Secretary checks whether the following acceptance
640 criteria are met:

- 641 • 55.00 % or more of the votes cast (abstentions not counted) are in favour;
- 642 • the population of the countries of the Members having voted positively
643 (abstentions not counted) reaches 65.00% or more of the population of the
644 countries of all Members having voted (only applicable for developing an EN or
645 TS);
- 646 • 5 or more TC members expressed commitment to participate.

647 If one or more of these criteria are not met, the proposal is rejected.

648 This way of working ensures that NO work is started for which there are no interested
649 stakeholders, or in other words: work can only start if at least a number of TC members
650 (representing the voice of the Member State that they each represent) have committed
651 to participate. This presumes, however, that the relevant stakeholders are indeed
652 represented in the TC ...

⁴³ <https://boss.cen.eu/reference%20material/Guidancedoc/Pages/TCNewWI.aspx>

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653 **6.1.5 'IPR'**

654 CEN (along with CENELEC and ETSI) develop and maintain European Standards, which
655 ensure a wide consultation of technical and societal stakeholders, reflecting the needs
656 and expectations of the European society. This gives a particular status to European
657 Standards as contributions to Europe's Digital Single Market objectives, which cannot
658 be compared to ICT technical specifications coming from other formal or informal
659 Standards Development Organizations (SDOs), which are not the formally recognized
660 "European Standardization Organizations" (CEN, CENELEC or ETSI)⁴⁴. For this reason, it
661 is crucial to sustain the existence of these latter organizations and as a consequence to
662 avoid disruptions of the business model of CEN and its members. This fundamental
663 principle is the same at ISO and IEC levels and concerns ISO/IEC JTC 1 standards too,
664 which are standards in the fields of information technology (IT) and Information and
665 Communications Technology (ICT).

666 The purchase and subsequent implementation of CEN Publications are voluntary by
667 nature. As a general principle, the Publication's exploitation rights are assigned to CEN
668 for the benefit of its members (national standardization bodies). CEN grants exclusively
669 and in totality to its members the assigned exploitation rights for publishing,
670 reproducing and distributing by any means of the CEN Publications.

671 CEN Members have the exclusive⁴⁵ right within their own territories (and the non-
672 exclusive right in the territories of third countries), to distribute, sub-distribute, adjust,
673 translate, rent, lend, derive revenue from duplication and loan, communicate to the
674 public (in total or in part, in summary or with comments), transfer all exploitation
675 licences and authorize all sub-licences and otherwise exploit the Publications and their
676 national versions.

677 CEN does not sell European Standards (ENs) centrally. CEN members do not sell ENs
678 either, but national versions⁴⁶ of ENs (e.g. BSI EN 16931-1, NF EN 16931-1, etc.). Since
679 CEN does not sell ENs, CEN does not define the licensing conditions for national
680 versions of ENs distributed made available at national level. Each CEN member defines
681 its own licensing conditions, which are based on national market needs.

682 Therefore, while CEN members are free to decide on their licensing models and
683 conditions, they are also requested not to share their related "sensitive commercial
684 information". This in order to ensure compliance to competition law principles.
685 Commercial and distribution rules at CEN level are provided in the CEN-CENELEC Guide
686 10, and these are general in nature, under some basic essential principles. Principles of
687 compliance to competition law are set under CEN-CENELEC Guide 29. CEN-CENELEC

⁴⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1025&from=EN>, Whereas (4)

⁴⁵ See also 6.4.3

⁴⁶ https://boss.cen.eu/ref/IR2_E.pdf uses the word 'implementation', as an EN shall be implemented by CEN/CENELEC members by giving it the status of a national standard, either by publication of an identical text or by endorsement, and by withdrawing any conflicting national standards. An EN shall be implemented identical in technical content and presentation (except translation) and with no restrictions for application. To avoid confusion this document will use the word 'version', assuming the withdrawal mentioned as implied.

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688 Guide 10 in its section 4 describes the CEN/CENELEC Copyright principles; this section
689 complements Clause 9 of the CEN-CENELEC Internal Regulations - Part 2⁴⁷.

690 This licensing mechanism is in fact recognised in Regulation 1025/2012 in recital 9 that
691 reads: *In order to ensure the effectiveness of standards and standardisation as policy tools*
692 *for the Union, it is necessary to have an effective and efficient standardisation system*
693 *which provides a flexible and transparent platform for consensus building between all*
694 *participants and which is financially viable*'.

695 CEN and CENELEC Standards documents and other technical deliverables and
696 publications are covered and protected by copyright.

697 'Copyright' is commonly understood as a set of exclusive rights granted to the author or
698 creator of an original work, including the right to copy (reproduce), distribute and adapt
699 the work. CEN and CENELEC have the copyright in all their respective Publications.

700 Publications, including their entire content and their associated metadata, as compiled
701 and structured in the databases of CCMC and the Members, together with their national
702 implementations, are works constituting individuality and originality and are therefore
703 copyright -protected under the laws of Belgium, which is the country of origin of the
704 works.

705 In order to ensure that CEN and CENELEC can claim copyright in all their Publications,
706 all participants in the CEN-CENELEC Technical bodies, Working Groups and Workshops
707 that develop Publications assign the copyright in their individual contributions to CEN
708 and CENELEC for the benefit of their Members by signing copyright assignment
709 statements in accordance with the Belgian law on copyright.

710 Copyright may be shared with other organizations (such as ISO, IEC and ETSI) on the
711 basis of bilateral agreements that may be concluded with these organizations. The
712 terms of any such agreement shall not deviate from the principles and the sales and
713 dissemination rights set out in this Guide, except as may be authorized by the respective
714 CEN and CENELEC Boards.

715 CEN and CENELEC assign the right to exploit Publications to each individual Member by
716 means of a specific bilateral Exploitation Agreement.

717 Members have thus the exclusive right within their own territories, and the non-
718 exclusive right in the territories of third countries, to distribute, sub-distribute, adjust,
719 translate, rent, lend, derive revenue from duplication and loan, communicate to the
720 public in total or in part, in summary or with comments, transfer all exploitation
721 licences and authorize all sub-licences and otherwise exploit the Publications and their
722 national implementations.

723 CEN and CENELEC also assign the right to exploit Publications to each Affiliate, CSB and
724 Other identified National Standardization Body and National Committee of third
725 countries, or regional partner by means of a specific bilateral exploitation agreement
726 and conditions as detailed in Annex B of this Guide.

⁴⁷ https://boss.cen.eu/ref/IR2_E.pdf

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727 It should also be reminded that any public accessibility of a Publication granted by a
728 Member, if any, does not mean that the copyright in that Publication has been waived by
729 CEN-CENELEC or the Member

730 For further details, please refer to CEN-CENELEC Guide 10⁴⁸ on “*Policy on dissemination,*
731 *sales and copyright of CEN-CENELEC Publications*” which outlines the CEN and CENELEC
732 joint policy on copyright and distribution.

733 **6.1.6 Funding**

734 A Standardization Request from the European Commission to a recognized European
735 Standards Organisation (CEN, CENELEC or ETSI) to develop a European standard that
736 provides solutions for compliance with a legal provision provides guidelines which
737 requested standards must respect to meet the essential requirements or other
738 provisions of relevant European Union harmonization legislation.

739 The European Commission is responsible for the preparation and drafting of
740 standardization requests. This is done in line with the principles included in the
741 Vademecum on European Standardization. Proposed draft standardization request are
742 submitted to the ‘Committee on Standards’, established under Reg. 1025/2012. Once
743 approved, they are officially transmitted to the ESOs for acceptance and execution.
744 Standardization requests must identify the requested European deliverables, and thus
745 also the subject matter, together with the deadlines for publication. Where conditions
746 for issuing a standardization requests are not yet fulfilled, the European Commission
747 launches appropriate preliminary or ancillary actions (studies or equivalent) to identify
748 the standardization needs and to be able to analyse whether the subject matter is
749 market-relevant.

750 Both standardization requests as well as Preliminary/Ancillary actions may receive
751 financial contributions from the European Commission. However, financial
752 contributions shall not be a precondition for acceptance of the standardization request
753 or to carry out preliminary/ancillary actions. If it emerges that financial support from
754 the European Commission is needed to carry out the work (e.g. no funds available from
755 the industry to develop such standardization activities), the CEN members shall be
756 involved to assess the request for funding towards the European Commission. If the
757 execution of a standardization request receives financial support from the European
758 Commission, the cost of the resulting deliverables would have been carried out together
759 by CEN and the European Commission. Generally, the financial contribution from the
760 European Commission covers the development of the standards (paying experts,
761 reimbursing travel costs, secretariat administrative support...), while CEN and its
762 members cover support the general administration of the standards’ development (e.g.
763 national committees activities, CEN management systems, standards editing and
764 publication).

765 There are no specific documents beyond Regulation (EU) 1025/2012 (Articles 15-17)
766 and the specific Framework Partnership Agreements (FPAs)⁴⁹ concluded between the
767 Commission and the ESOs explaining the details for financial support⁵⁰.

⁴⁸ <https://www.cencenelec.eu/standards/Guides/Pages/default.aspx>

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768 The FPA is managed by CEN. Only CEN (i.e. not the NSBs or TCs) can submit proposals of
769 standardisation actions to be funded by grants of the Commission. All potential
770 proposals have to go through the planning of CEN and get the agreement of the General
771 Assembly. The planned proposals are consolidated every year in a table and
772 communicated to the European Commission (DG GROW). The actions stem from
773 specific standardisation requests or independent initiatives of the TCs, and are intended
774 to develop and publish ENs, TSs, TRs and/or CWAs. Usually the ICT actions correspond
775 to those that are mentioned in the latest version of the Rolling Plan for ICT
776 standardisation⁵¹. Every year the funding to ICT standardisation actions of CEN and
777 ETSI is allocated by DG GROW on the basis of their prioritisation with respect to policy
778 objectives, since usually the available budget is not sufficient to accommodate all
779 requests.

780 It is interesting to note that the FPA specifies in its Annex II "General Conditions",
781 Article II.8.1, that "*Unless stipulated otherwise in the Specific agreement, ownership of the*
782 *results of an action, including industrial and intellectual propriety rights, and of the*
783 *reports and other documents relating to it, shall be vested in the Partner [CEN]."*
784 Therefore, CEN holds all IPR of the standardisation deliverables that result from a CEN
785 action even if the work for their development is (co-)funded by the Commission.

786 The CEN-CENELEC Guide 10 contains the updated policy on dissemination, sales and
787 copyright of CEN-CENELEC publications. Section 4 covers the copyright principles,
788 while section 5 addresses the distribution and dissemination of publications. It is
789 interesting to note that 'Article 5.1 - Fundamental principles' stipulates that "*Members,*
790 *Affiliates, CSBs and other parties involved in the distribution of Publications or products*
791 *containing them, in any form or in any language, shall not make them available free of*
792 *charge. Any request to make Publications available free of charge shall be referred to the*
793 *CEN or CENELEC Administrative Board. [...]*". Its Annex A addresses the access to
794 standards paid by a sponsor.

795 **6.2 Digital Single Market - environment**

796 **6.2.1 Role of 'standards'**

797 European Standards are key contributors for the development of the EU Digital Single
798 Market⁵². Furthermore, in the 'Communication on ICT Standardisation Priorities for the
799 Digital Single Market' (COM(2016)176) adopted on 19 April 2016 as part of the package
800 on "Digitising European Industry", ICT standards are recognized as a cornerstone of the
801 Digital Single Market.

⁴⁹ The current FPA CEN 2014 can be downloaded for instance at <https://www.din.de/blob/251642/c3bcfb4459661e2e489d8ce981babe26/cen-fpa-2014-data.pdf> , while the Amendment 1 is at <https://www.din.de/blob/251644/3e45442e9f5f7c5dd40cd12547d380a7/cen-fpa-2014-amendment-1-data.pdf>

⁵⁰ This relates to developments of standards for public sector policy objectives; it does not relate to developments for which the NWIP comes from the private sector.

⁵¹ The annual editions can be downloaded at http://ec.europa.eu/growth/industry/policy/ict-standardisation_en#rolling_plan_ict_standardisation

⁵² To be able to better support this growing digital trend, CEN and CENELEC have adopted in 2017 a Strategic Plan for Digital Transformation.

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802 The role of European Standards for the Single Market is therefore more than ever
803 relevant; Although rather technical and mostly unknown to the public and media, they
804 represent one of the most important issues for businesses. Often perceived as boring
805 and not particularly relevant to some organizations, they are actually crucial in
806 facilitating trade and hence have high visibility among manufacturers inside and outside
807 Europe. Standards provide individuals, businesses and all kinds of organizations with a
808 common basis for mutual understanding. A standard represents a model specification, a
809 technical solution against which a market can trade. It codifies best practice and is
810 usually state of the art.

811 In essence, European Standards relate to products, services or systems. Today, however,
812 standards are no longer created only for technical reasons but have also become
813 enablers for greater social inclusiveness and engagement with technology, as well as
814 convergence and interoperability within growing markets across industries.

815 But the European Standard is something much more relevant than this: the EN
816 (European Standard) carries with it the obligation to be implemented at national level
817 by being given the status of a national standard and by withdrawal of any conflicting
818 national standard: the EN prevails over any national standard.

819 The fact that European Standards must be transposed into a national standard in all
820 member countries guarantees that a manufacturer has easier access to the market of all
821 these European countries when applying European Standards

822 European Standards respond to the needs of the industry while meeting consumer
823 expectations, and contribute to the consolidation of the European Single Market by
824 placing widely accepted products and services on the market.

825 European standardization is a recognized system to support the European Single
826 Market: in the European Standardization System (ESS), standards development is the
827 result of a long-standing and successful cooperation among all interested actors
828 including industry, SMEs, consumer organizations and societal stakeholders, as well as
829 policy makers. As such, the ESS is a unique system, where standards are established
830 through the consensus of all stakeholders, and published by the recognized European
831 Standardization Organizations (CEN, CENELEC and ETSI).

832 The Cooperation between the European Standardization Organizations and the EU – a
833 strong public partnership for the Single Market

834 The European Standardization Organizations (ESOs), the European Commission (EC),
835 and the European Free Trade Association (EFTA) have been working together since
836 1973. This partnership still provides nowadays one of the key elements necessary to
837 complete the Single Market, and by extension the Digital Single Market. European
838 Standards have supported the introduction of new products, helped innovation and
839 boosted competitiveness.

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840 6.2.2 The EU Regulation 1025/2012

841 6.2.2.1 General

842 The Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25
843 October 2012⁵³ on European Standardization lays down the rules governing
844 cooperation between European standardisation organizations, national standardisation
845 bodies, Member States and the Commission; the establishment of European standards
846 and European standardisation deliverables for products and services in support of the
847 Union legislation and policies; the identification of ICT technical specifications eligible
848 for referencing; the financing of European standardisation and stakeholder
849 participation in European standardisation.

850 The three European Standardization Organizations, CEN, CENELEC and ETSI are
851 officially recognized as competent in the area of voluntary technical standardization.
852 The Regulation, which indeed settles the legal framework for standardization, entered
853 into force on 1 January 2013. It aims at strengthening the use of standardization in
854 support of EU Policies and Regulation in support of the European Single Market.

855 CEN is one of three European Standardization Organizations that have been officially
856 recognized by the European Union and by the European Free Trade Association (EFTA)
857 as being responsible for developing and defining voluntary standards at European level.

858 The European Standards published by CEN are developed by experts, established by
859 consensus and adopted by the Members of CEN. It is important to note that **the use of**
860 **standards is recognised in the Regulation as voluntary**. Regulation 1025/2012 does
861 not recognise the particular case where standard compliance is made obligatory⁵⁴
862 under a specific directive. This is a mismatch with Directive 2014/55/EU on which the
863 EMSFEI has considered action to be taken.

864 The importance of standardisation is still increasing in the present Europe. The main
865 purpose of European standardisation organizations is to contribute to the formation of
866 European norms, which are voluntary, in order to eliminate technical obstacles in
867 trading. It is beneficial for the whole economy. Technical norms play a significant role —
868 namely for small and medium—sized enterprises — as they facilitate enterprise — as
869 well as for consumers because they maintain and increase quality and assure
870 interoperability and compatibility.

871 In this context, the terms 'Standardisation Request', 'Harmonised Standard' and
872 'Notification System' are relevant.

873 6.2.2.2 Standardisation request

874 Standardisation results from voluntary cooperation between industry, businesses,
875 public authorities, and other stakeholders. About a fifth of all European standards are
876 developed following a standardisation request⁵⁵ (mandate) from the European

⁵³ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025> or
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:316:0012:0033:EN:PDF>

⁵⁴ This is why CEN has taken exceptional actions and has been working with the European Commission (DG
GROW) to address this particular situation.

⁵⁵ https://ec.europa.eu/growth/single-market/european-standards/requests_en

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877 Commission to the European Standardisation Organisations (ESOs). This is: a request to
878 draw up and adopt European standards or European standardisation deliverables in
879 support of European policies and legislation. European standards and European
880 standardisation deliverables, even though developed under a Commission request and
881 for European legislation, usually remain voluntary. However, when European standards
882 are adopted, National Standardisation Bodies (NSBs) should transpose them into
883 identical national standards and withdraw any conflicting national standards.

884 6.2.2.3 Harmonised standard

885 The definition of harmonised standard is given in Article 2 (1) (c) of Regulation
886 1025/2012. 'Harmonised standard' means a European standard adopted on the basis of
887 a request made by the Commission for the application of Union harmonisation
888 legislation;

889 "Union harmonisation legislation" here addresses goods such as toys, lifts, construction
890 products, etc⁵⁶. The harmonisation legislation has its roots in Article 114 of the TFEU⁵⁷
891 that specifically sets the coverage to health, safety, environmental protection and
892 consumer protection.

893 Compliance with harmonized standards provides a presumption of conformity with the
894 corresponding requirements of harmonization legislation. Manufacturers, other
895 economic operators or conformity assessment bodies can use harmonised standards to
896 demonstrate that products, services or processes comply with relevant EU legislation.

897 The references of harmonised standards must be published in the Official Journal of the
898 European Union. The purpose of this website is to provide access to the latest lists of
899 references of harmonised standards and other European standards published in the
900 Official Journal of the European Union (OJEU).

901 The use of these standards remains voluntary. Manufacturers, other economic
902 operators, or conformity assessment bodies are free to choose another technical
903 solution to demonstrate compliance with the mandatory legal requirements.

904 *This 'Union harmonisation legislation' does not include e-invoices / e-invoicing, thus the*
905 *EN 16931-1 cannot be considered a harmonised standard even if it was developed on the*
906 *basis of a standardisation request and published in the Official Journal.*

907 6.2.2.4 Notification System

908 The notification system⁵⁸ was set up to inform stakeholders about policy actions related
909 to European standards. It helps ensure proper consultation and market relevance
910 before the action is taken. The obligation to publish information on a website stems
911 from Regulation (EU) No 1025/2012.

⁵⁶ see the full list at the bottom of https://ec.europa.eu/growth/single-market/goods/new-legislative-framework_en .

⁵⁷ (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2008:115:TOC>

⁵⁸ https://ec.europa.eu/growth/single-market/european-standards/notification-system_en

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912 6.2.2.5 A little confusion

913 Regarding the '*Digital Single Market - Policies about ICT and standardisation*', the
914 following can be found⁵⁹:

915 **Standards:** The Commission is setting up ICT standardisation priorities for the Digital
916 Single Market. The initiative aims at re-energising the standard-setting system in Europe
917 as a step towards industrial global leadership and digital innovation.

918 **Identification of ICT specifications:** The European Commission has developed a
919 flexible approach to standardisation when identifying new ICT technical specifications.

920 **ICT and Standardisation:** Standardisation is the process by which specifications are
921 set. The majority of ICT specifications help ensure that devices, systems and services
922 retain the ability to connect and interoperate with each other, boosting innovation, and
923 keeping ICT markets open and competitive.

924 **Rolling plan for ICT standardisation:** The EU Rolling Plan provides an overview of the
925 needs for preliminary or complementary ICT standardisation activities to be
926 undertaken in support of EU policy activities.

927 **European Multi Stakeholder Platform on ICT Standardisation:** An advisory expert
928 group on all matters related to European ICT standardisation.

929 **Open standards:** Building open ICT systems by making better use of standards in
930 public procurement will improve and prevent the lock-in issue.

931 The European Commission can **identify** ICT technical specifications that are not
932 national, European, or international standards, provided they meet precise
933 requirements. **Once identified and approved, these specifications can then be**
934 **referenced in European public procurement.** (see also 6.2.2.6).

935 This flexible approach allows the EU to respond to the fast evolution of technology in
936 ICT. It also helps encourage competition, promote interoperability and innovation, and
937 facilitate the provision of cross-border services.

938 The European Multi Stakeholder Platform (MSP) – the expert advisory group on ICT
939 standardisation - sets up evaluation groups to examine the compliance of technical
940 specifications in the field of ICT that are not national, European or international
941 standards with the requirements set out in in Annex II of Regulation 1025/2012 on
942 European Standardisation. Based on the evaluation groups outcomes, MSP produces an
943 evaluation report with their advice to the Commission on the possibility to identify such
944 technical specifications to be referenced in public procurement.

945 Before taking its decision, the European Commission will also consult the committee or
946 the relevant sectorial experts. Based on the consultations, the Commission decides
947 whether or not to identify the ICT technical specification as a “common technical
948 specification” that can be used by public authorities in their public procurement (in
949 accordance with the Public Procurement Regulations).

⁵⁹ <https://ec.europa.eu/digital-single-market/en/policies/76001/3535>

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950 This will not be further elaborated here. It strongly underpins the idea, that
951 interpretation of the word 'standard' in (Commission) documents must be done careful
952 and in a context dependent way. This presumes (also) the proper subject matter
953 knowledge being present. Different interpretations of the same word between
954 discussion partners can cause lot of misunderstanding. And many of the topics
955 mentioned here also play a role in the field of electronic invoicing (as well as electronic
956 procurement).

957 6.2.2.6 Food for thought

958 The proven mechanism of development and endorsement of European Standards, on
959 which Regulation 1025/2012 builds, will fail if experts do not want to participate in the
960 development of standards for which no proper use is perceived and/or for which 'IPR
961 issues' are seen as hampering acceptance. It should be noted that participation in
962 standards development activities in a Standard Development Organisation is also on a
963 voluntary basis.

964 Participants in standardisation activities in a Standard Development Organisation may
965 keep away or even transfer their work outside a Standard Development Organisation.

966 This latter point is illustrated by COM(2016) 358⁶⁰ final that reads: '*Standard setting in*
967 *Europe is largely industry driven. While standards are developed by a standards*
968 *organisation, the market may also simply adopt the technical specifications developed by*
969 *one company or by bodies active in the field, i.e. professional organisations*'. Implying in
970 fact that a body that experiences or perceives 'hassle' could easily transfer their work
971 outside CEN.

972 The EMSFEI sees that the cumulative effect can, in the end, jeopardise the development
973 of European Standards and European standardisation deliverables in support of union
974 legislation and policies. For reasons of e.g. availability a move to specifications (see
975 6.2.2.5) could take place.

976 **6.3 The European Multi-Stakeholder Forum on e-Invoicing (EMSFEI)**

977 **6.3.1 Roots of the EMSFEI**

978 Responding to market needs and the calls of stakeholders, the European Commission
979 set up an 'Expert Group on e-Invoicing' in late 2007 to look at the barriers impeding a
980 faster uptake of electronic invoicing within the EU. At the end of 2009, the Expert Group
981 published its final report, including a proposal for a European Electronic Invoicing (EEI)
982 Framework⁶¹. This final report led to the Communication COM(2010) 712 final⁶² '
983 Reaping the benefits of electronic invoicing for Europe' which in fact provides the basis
984 for the EMSFEI as follows:

985 Communication COM (2010) 712 Final mentions the following Actions:

⁶⁰ <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-358-EN-F1-1.PDF>

⁶¹ http://ec.europa.eu/internal_market/consultations/docs/2009/e-invoicing/report_en.pdf

⁶² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0712:FIN:en:PDF>

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5.1 Member States should develop a strategy to promote e-invoicing at national level.

This strategy should have the objective to:

- advocate the use of e-invoicing, in particular by SMEs
- coordinate at national level existing and forthcoming initiatives to promote the uptake of e-invoicing, including the legal, standardisation and interoperability aspects with a European dimension
- monitor and set targets for the adoption level of e-invoicing.

5.2 To support the realisation of these objectives, Member States should put in place national multi-stakeholder e-invoicing fora and inform the Commission of their establishment by June 2011. National fora should ensure a balanced representation of stakeholders, with sufficient participation of public authorities and users of e-invoicing services including consumers, SMEs and large businesses.

And Action:

6.1 The Commission will establish for 3 years a European multi-stakeholder e-invoicing forum, hereinafter 'the European E-invoicing Forum', composed of delegates from national fora and representatives of relevant European associations from the users' community, CEN, the European Central Bank (ECB) and the Article 29 Data Protection Working Party.

986

987 The first EMSFEI⁶³ was established by Commission Decision of 2 December 2010
988 (COM(2010)8467)⁶⁴. It was renewed by Article 5 of the Commission Decision of 25 June
989 2014 (COM(2014)4142) and renewed again by Article 5 of the Commission Decision of
990 14 August 2017 (COM(2017)5580).

991 An article in the Commission Decision deserves special attention:

992 In COM(2010)8467, i.e. for the first EMSFEI, it says in Article 4:

993 ***Composition***

994 *The Forum shall be composed of 63 members:*

995 *(a) two members per national multi-stakeholder forum;*

996 *(b) six members of European associations representing consumers, small and*
997 *medium-sized enterprises and large corporates;*

998 *(c) one representative from each of the European Committee for Standardisation*
999 *(CEN), the European Central Bank (ECB) and the Article 29 Data Protection*
1000 *Working Party (1).*
1001

⁶³ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2650>

⁶⁴ Exact date is not clear; it is also mentioned in the Official Journal of the European Union, C 326 of 3 December 2010 as 'COMMISSION DECISION of 2 November 2010 setting up the European Multi-Stakeholder Forum on Electronic Invoicing (e-invoicing) (2010/C 326/07); <https://eur-lex.europa.eu/legal-content/FRF/TXT/?uri=OJ:C:2010:326:TOC>

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1002 Where COM(2017) 5580⁶⁵ final, i.e. for the third EMSFEI, says in Article 4:

1003 **Membership**

1004 *1. The Forum shall consist of up to 70 members and be composed of:*

1005 *(a) two members per Member States who shall be:*

- 1006 *– The Member State authority in charge of eInvoicing at government level,*
1007 *nominated by the Member State,*
1008 *– one organisation representing a common interest related to eInvoicing,*
1009 *namely the national forum for eInvoicing; in case a national forum does not*
1010 *exist, an organisation will be selected through a call for applications which*
1011 *best represents the national eInvoicing stakeholders;*

1012 *(b) Organisations at EU level representing consumers, small and medium - sized*
1013 *enterprises, large corporations and public administration suppliers, the banking*
1014 *sector, the accountants and auditors companies, eInvoicing service providers,*
1015 *cross - border eInvoicing infrastructure enablers, public procurement bodies (e.g.*
1016 *CPBs);*

1017 *(c) Other public entities:*

- 1018 *– the European Central Bank (ECB);*
1019 *– the Working Party on the Protection of Individuals with regard to the*
1020 *Processing of Personal Data set up by Article 29 of Directive 95/46/EC;*
1021 *– the United Nations Centre for Trade Facilitation and Electronic Business;*
1022 *– the European Committee for Standardization (CEN).*

1023 *2. Member States' authorities, organisations and other public entities shall*
1024 *nominate their representatives and shall be responsible for ensuring that their*
1025 *representatives provide a high level of expertise.*

1026

1027 **Observations:**

- 1028
 - The language used ("SHALL") means⁶⁶ that it is an absolute requirement, imposed by the Commission and inherently fundamental for assumptions to be made about the functioning and operation of the EMSFEI.
 - It is implicitly assumed that individual Member States meet the requirement of indeed having a (single) authority in charge of eInvoicing at government level, as well as a national forum with presumed remit, expertise, network and responsibilities.

1035 For further information on scope, remit, mandate and deliverables, the reader is referred to e.g.

1037 <https://ec.europa.eu/cefdigital/wiki/display/EINVEXPERT/European+Multi-Stakeholder+Forum+on+eInvoicing>

1038

⁶⁵ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=34232&no=1>

⁶⁶ <https://www.ietf.org/rfc/rfc2119.txt> - 'keywords for requirement levels'

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1039 **6.3.2 Concerns regarding the EMSFEI**

1040 6.3.2.1 Lack of interest

1041 More than once, during the existence of the subsequent Forums, the concern on the lack
1042 of interest⁶⁷ of the members in communication and awareness activities was shared.

1043 This implies that sometimes basic knowledge must be provided during a discussion in
1044 the EMSFEI, trying to get it back on track, costing time and slowing down progress
1045 unnecessarily. The Commission has tried to improve this (see Article 4 in COM(2017)
1046 5580 final and the Observations above, but it is an attempt at a very late stage).

1047 6.3.2.2 Lack of take-up

1048 Example: Document 'CEN PC 434 EMSFEI_2015.03.18 final.ppt' mentions, under the
1049 header 'PC 434 critical issues – Core processing' the lack of legal clarity around recital
1050 34 from Directive 2014/55/EU: "*Contracting authorities ... should therefore not refuse*
1051 *electronic invoices which meet the above conditions ... However, other compelling grounds*
1052 *for refusal, such as those relating to contractual conditions, should not be affected by this*
1053 *obligation*".

1054 The 'Draft minutes of the EMSFEI meeting 18-3-2015' confirm on this: 'Finally, he (red:
1055 the Chairperson of the EMSFEI) confirmed that the Commission services will help
1056 CEN/PC 434 in the interpretation of Article 7 of the Directive 2014/55/EU.

1057 The topic was raised again with the Commission; see 'SUMMARY OF THE INFORMAL
1058 MEETING AMONG REPRESENTATIVES OF THE COMMISSION SERVICES, CEN/PC 434,
1059 AND EMSFEI BRUSSELS, 22 JUNE 2015⁶⁸'. One of the conclusions from this meeting is:
1060 '*Optional data elements included in the EN can be required contractually at the domestic*
1061 *and cross-border level. However, only those elements that are part of the core invoice can*
1062 *be required contractually*'; this conclusion is in fact a precursor to (the use of) CIUS.

1063 Note that as of the day of writing the version 0.2 of this document, there are no tangible
1064 documents known providing the interpretation as mentioned above.

1065 Example: '20160216 proposed Recommendations' for the 21 March 2016 EMSFEI
1066 meeting, minuted in 'DRAFT minutes EMSFEI 21032016_v2', repeated in ' 20160925
1067 proposed Recommendations - Draft 1.0' for the 21 October 2016 EMSFEI meeting,
1068 again minuted in Draft Minutes 11 EMSFEI_v0.01, but no obvious follow-up. One of the
1069 Recommendations encompasses (already) the current assignment of SG6.

1070 6.3.2.3 Interaction

1071 For legacy reasons, the EMSFEI and its supporting NMSF's, were established 'in parallel
1072 to' existing framework established by 'standardisation'. One of the reasons being, that
1073 there are different targeted participants / audiences: for the EMSFEI these can be found
1074 in the upper half of the EIF⁶⁹ model (see 5.1), where those for 'standardisation' can be
1075 found in the lower half.

⁶⁷ This includes for instances topics that are not considered relevant to the own national situation.

⁶⁸ Document CEN-TC434_N0108_N108_Informal_meeting_EC_CEN_PC_434_and_EMS.pdf

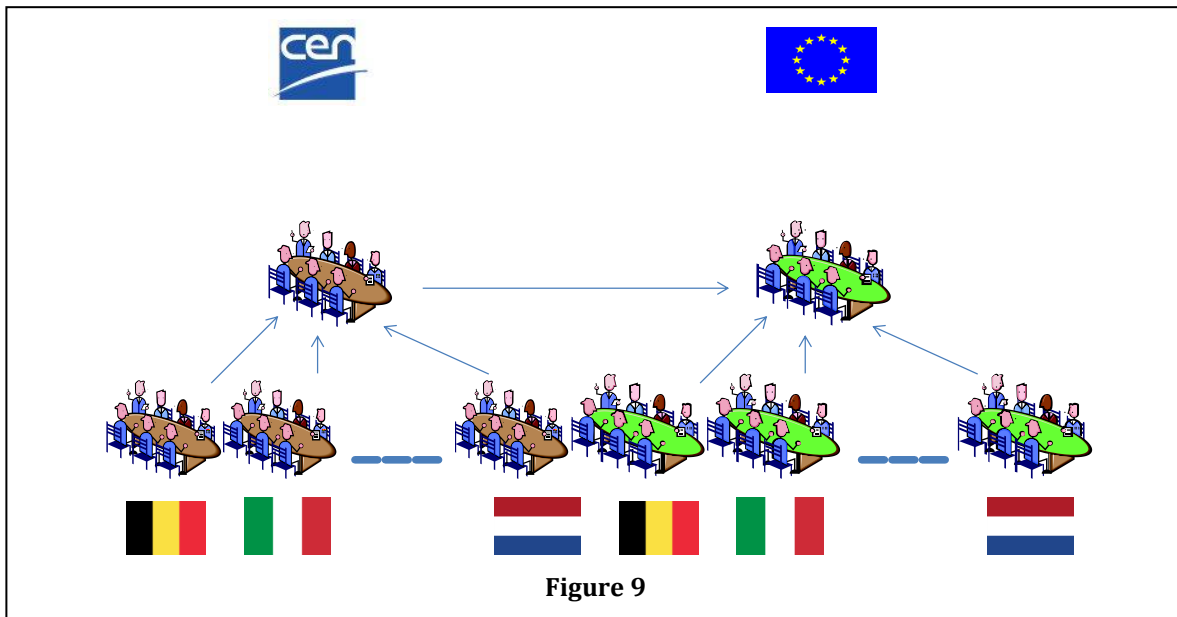
⁶⁹ <http://ec.europa.eu/idabc/servlets/Docb0db.pdf?id=31597>

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1076 In practice this resulted in the organisational structures as schematically shown in
 1077 Figure 9.



1078 In the EMSFEI, by means of liaison via the TC 434 chair, the EMSFEI participants were
 1079 informed on TC434 matters as work, status, progress, ... and the results of decision
 1080 making. But they were, for obvious reasons, not necessarily actively involved in such
 1081 decision making⁷⁰. That decision making took place in another network - that (apart
 1082 from exceptions) does not overlap. It is not unexpected that in the EMSFEI questions
 1083 emerge ...

1084 This situation was flagged in the beginning of 2015 (!), some short period after the work
 1085 in TC 434 had properly taken off. It was taken up in EMSFEI Document '20150224
 1086 Background Document 2.0 Revised - Draft ToC' that already suggested a chapter 7: *The*
 1087 *role of the EMSFEI (+ EXEP ?) towards PC434'* and in document '20150414 Interaction
 1088 0.2a' that elaborated on '*Source: A mechanism is needed where PC434 can communicate*
 1089 *with EMSFeI and/or European Commission (Art. 4.2 in*
 1090 *C_2014_7912_F1_ANNEX_EN_V6_P1_778758.pdf) without causing delay.*

1091 *Timely responses need to be ensured. The suggested role will be that AGS can respond to*
 1092 *questions where this clarifies matter that has already been discussed and agreed in a*
 1093 *previous EMSFEI Plenary session. In the case of other issues, communication will be done*
 1094 *via e-mail where possible unless the topic at hand causes the need for AGS to organise an*
 1095 *online meeting between EMSFEI and PC434 management (Commission and Chairs) to*
 1096 *decide if a full (physical ?) Plenary meeting is required.'*

⁷⁰ Unless they participated themselves directly (at TC level) or indirectly (at NC level) in the work of TC 434
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1097 The final version of this 'Background Document' ('20160216 Document 2.0 Clean'⁷¹) as
1098 presented to (and approved by) the EMSFEI on 21 March 2016 contains a section 8: '*The*
1099 *role of bodies towards Project Committee 434*' which comes to the suggestion:

Trigger 14: The European Multi-Stakeholder Forum on e-Invoicing should discuss establishing a more suitable way to allow for its consultation in the work of Project Committee 434 and agree with the European Commission. The relevance of the Objective justifies the need for flexibility implied.

1100

1101 Interaction has been on the agenda of the EMSFEI at several further occasions. Note for
1102 instance the document 'Draft minutes of the EMSFEI meeting 18-3-2015', or
1103 'Presentation EMSFEI_2015-09-24_CEN-PC434' that included the following slide as
1104 shown in Figure 10.

The slide features the CEN logo on the top left and the NEN CEN/PC 434 Electronic Invoicing logo on the bottom right. The main title is 'Input to the CEN/PC 434 work'. The content is a bulleted list:

- The approach chosen ensures ('*ex ante verification*') that needs of Commission, public sector buyers/contracting authorities, ... are met.
- It also required to ensure to meet the needs of other stakeholders e.g. suppliers and B2B.
- During the work, CEN PC 434 can have dedicated meetings with a.o. The Commission to provide clarification and guidance on Directive 2014/55/EU's impacts and other issues encountered.
- To further ensure stakeholders ('your') input:
 - EMSFEI has already received the EN draft and will be informed when the Enquiry stage will start through AGS
 - [CEN/PC 434 web page](#) can be monitored for the current EN status
 - During the enquiry stage each National Standardization Organisation (NSO) will make publicly available the EN draft and collect comments received
 - These comments will be analysed and elaborated into the NSO vote/comment towards CEN PC 434
 - The best way to contribute to CEN/PC 434 is to become member of your own NSO (CEN voting members)
 - This is especially true for all the other CEN/PC434 deliverables: TS (Technical Specifications) and TR (Technical Report) are commented and voted directly by CEN members without public enquiries

Figure 10

1105 At a later moment in time, in document Caccia_EMSFEI_20160321_CEN-TC434_v3 the
1106 EMSFEI yet again warned about 'Unbalanced participation (private/public sector,
1107 national mirror committees, ...)' as one of the persisting problems.

71

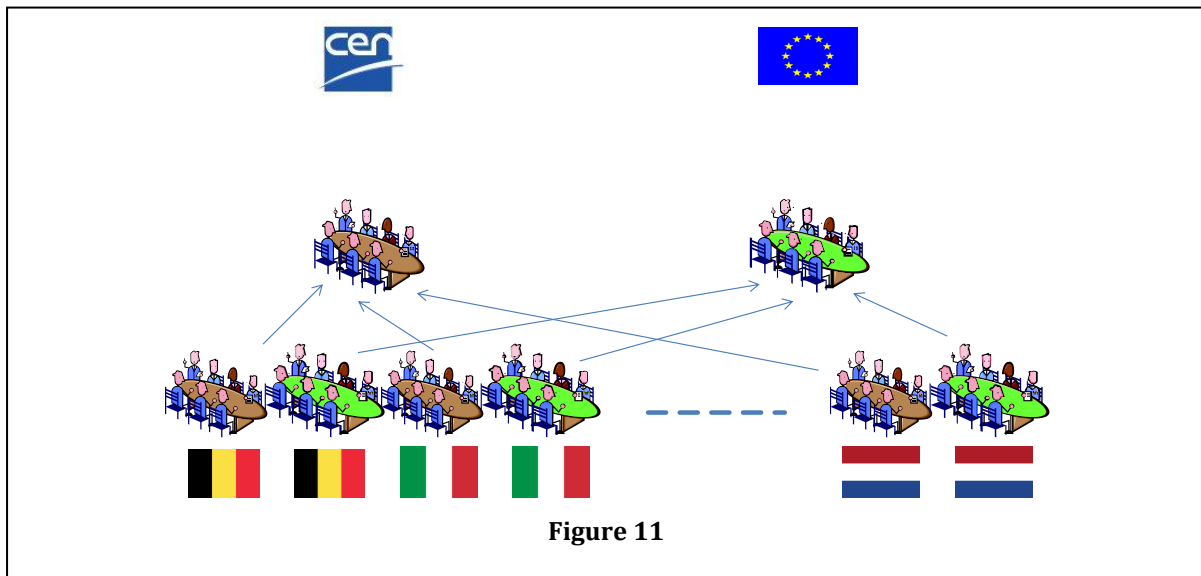
<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892821/20160216%20Document%202.0%20Clean%20%28%29.pdf?api=v2>

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1108 A better situation is given in Figure 11.



1109 **6.4 Further documentation**

1110 Included for sake of reference.

1111 **6.4.1 The start of CEN/PC 434**

1112 CEN's 'Project Committee 434 on electronic invoicing' (PC434 for short) was
 1113 established on 6/5/2014 by decision⁷² of the CEN Technical Board, following a 'New
 1114 Work Item Proposal' that originated from and submitted by the National
 1115 Standardisation Organisations of The Netherlands (NEN) and Italy (UNI).

1116 It mentioned in 2 Scope:

1117 *The Project Committee on Electronic Invoicing will develop the deliverables that will be*
 1118 *described in the (final version of the) standardization request by the European*
 1119 *Commission (in support of the implementation of the 'proposal for a Directive on*
 1120 *electronic invoicing in public procurement'). These deliverables are needed to support the*
 1121 *exchange of information by electronic means in support of business processes in the trade*
 1122 *of goods and services.... In view of the ambitious timeframe and considering the unanimous*
 1123 *endorsement by the Forum it is felt that it is appropriate to start the procedure for the*
 1124 *creation of the Project Committee that should cater for the required development*
 1125 *activities before the (assumed) formal acceptance of the final standardization request by*
 1126 *CEN.*

1127 They thus anticipated on a Standardisation Request⁷³ to be issued by the European
 1128 Commission following Directive 2014/55/EU 'e-Invoicing in e-Procurement'.

1129 The PC needed to be established before this Standardisation Request came out, as it was
 1130 seen that there would be a time squeeze to meet the deadlines from the Directive, the

⁷² BT N 9435 / BT C12/2014 6/5/2014

⁷³ C_2014_7912_F1_ANNEX_EN_V6_P1_778758.pdf - 10 december 2104

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1131 intention being that the PC would be a in a position to start the work immediately upon
1132 BT acceptance of the Standardisation Request⁷⁴.

1133 CEN/TC 434 was created to support a standardization request on eInvoicing in public
1134 procurement. This standardization request was officially sent by the Commission on 6
1135 December 2014, the late date of which brought some uncertainty in the organization of
1136 CEN/TC 434.

1137 Based on the draft Standardisation Request, BT decided to⁷⁵

- 1138 • accept the European Commission Standardization request addressed to the
1139 European Standardisation Organisations in support of the implementation as
1140 regards a European standard on electronic invoicing and a set of ancillary
1141 standardisation deliverables;
- 1142 • to allocate the work to CEN/TC 434 'Project Committee - Electronic Invoicing'.

1143 It should be noted that said document already brought to the attention of the CEN
1144 Members that: *'This means that the use of the EN will be mandatory for all the member
1145 states and therefore will be mandatory of use in the whole of the EU market. There are
1146 already deep concerns from the organizations that have been consulted by the Commission
1147 when drafting the standardisation request. These concerns are about the non-free
1148 availability of the standards. According to these organizations, this is incompatible with
1149 the law'*.

1150 And: *'However, 28 months for delivering an EN (even if some elements to be included in
1151 the standard are already available) remains a challenging issue'*.

1152 The Work programme of PC 434 was approved on 5/5/2015 by BT⁷⁶ and to allow for
1153 better participation, BT decided⁷⁷ to allow the participation of 6 European Commission
1154 representatives in the CEN/TC 434 work.

1155 A normal development took place, based on work programme⁷⁸, frequently signalling
1156 experienced (participation) problems to the EMSFEI.

1157 EN 16931-1 was approved on 28 june 2017 and, according to the Directive
1158 2014/55/EU, led to the Commission implementing decision⁷⁹ as intended.

1159 **6.4.2 CEN/TC 434 concerns on 'IPR'**

1160 The problem of the cost associated with the standard was raised since the beginning
1161 (i.e. at the kick off meeting of TC 434, PC 434 at that time) and from time to time it
1162 popped up during the TC meetings. Everybody then was aware that the standard had a
1163 cost associated and the general idea was that paying the cost of the (purchase of the)
1164 standard (documents) would have implied the right to use it (e.g. to create a software).

⁷⁴ The fact that the Standardisation Request was not finalised at the time, a Project Committee was seen as a best solution, rather than TC.

⁷⁵ BT N 9717 / BT C104/2014 14/10/2014

⁷⁶ BT N 9868 / BT C38/2015 5/5/2015

⁷⁷ BT N 9890 / BT C33/2015 14/4/2015

⁷⁸ CEN-TC434_N0028_N028_Work_programme_CENPC_434_2014_09-09

⁷⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1870&from=EN> and
https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2017:266:TOC&uri=uriserv:OJ.L_.2017.266.01.0019.01.ENG

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1165 At the TC 434 plenary in Milan (Oct 12th, 2017) where also the European Commission
1166 was represented the TC experts started extensive discussions mainly on IPR. The price
1167 to be paid, especially for countries like Denmark, was seen not only as a barrier but also
1168 as unfair: the use of the standard is not a choice, it is an essential part of Directive
1169 2014/55/EU implementation so in principle its purchase and use for and in
1170 implementations should be free of charge like the text of the Directive.

1171 It was decided to draft a letter to CCMC both to inform about the issue and to try to have
1172 clarifications on the IPR issues identified during the discussion: the fact that some NSO
1173 apply a specific license for derivative works, the lack of uniform rules in EU and the
1174 unclarity of the meaning of exclusive licensing given to NSOs (e.g. for translations).

1175 A discussion was engaged with CCMC including a face-to-face meeting in Brussels. CCMC
1176 prepared a report of the meeting that was distributed to the TC to help provide
1177 clarification as an answer to the discussion held in Milan and a 'non-technical' version of
1178 this report was made available⁸⁰ to the EMSFEI.

1179 The topic quickly got broader attention: The Netherland's Ministry of Economic Affairs
1180 raised the issue at the Committee of Standards, the Comitology group where discussions
1181 and decisions related to Regulation 1025/2012 are taken⁸¹. The European Commission
1182 has been asked there to provide proposals to avoid problems in future following from:

- 1183 • mandatory use of standards and
- 1184 • IPR matters.

1185 At a later moment in time, CEN provided a proposal to solve the matter for EN-16931,
1186 which was sent to the European Commission on 22 June 2018.

1187 **6.4.3 Clarification on 'exclusive'**

1188 Section 6.1.5 contains the text:

1189 *"Members have thus the **exclusive** right within their own territories, and the non-*
1190 *exclusive right in the territories of third countries, to distribute, sub-distribute,*
1191 *adjust, translate, rent, lend, derive revenue from duplication and loan,*
1192 *communicate to the public in total or in part, in summary or with comments,*
1193 *transfer all exploitation licences and authorize all sub-licences and otherwise*
1194 *exploit the Publications and their national implementations."*

1195 It is felt that under the given circumstances it is useful to elaborate the meaning of
1196 "**exclusive**", as used in general with CEN Publications, a little more.

1197 This elaboration is based on the following definition⁸² :

1198 *"Exclusive and non-exclusive rights: "although in both cases the licensor permits*
1199 *the licensee to use his/her intellectual property in return for a negotiated*
1200 *compensation, exclusive and non-exclusive licenses refer to the degree of*

⁸⁰

<https://ec.europa.eu/cefdigital/wiki/download/attachments/55892990/20180410%20Clarification%20on%20IPR%20and%20CPR%200.6.pdf?api=v2>

⁸¹ An example of the solution found in the Netherlands was provided.

⁸² Source: <https://www.iprhelpdesk.eu/kb/3189-what-difference-between-exclusive-and-non-exclusive-licence>

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1201 *exclusivity that will be granted to the licensee. In an exclusive licence, the parties*
1202 *agree that no other person/legal entity can exploit the relevant IPRs, except the*
1203 *licensee. On the other hand, a Non-Exclusive Licence grants to the licensee the*
1204 *right to use the IPRs, but on a non-exclusive basis. That means that the licensor*
1205 *can still exploit the same IPRs and he/she can also allow other licensees to exploit*
1206 *the same intellectual property”.*

1207 In the situation at hand, the 'licensor' equals CEN, the 'licensee' equals any of CEN's
1208 members: the European National Standardisation Bodies (NSB's) and the 'negotiated
1209 compensation' equals nil.

1210 To provide some practical illustration, using some tangible NSB and country names for
1211 illustration purposes only:

- 1212 • CEN members are the only ones who can actively sell and promote the purchase
1213 of the EN (national adoptions) in their own country. They cannot compete with
1214 the other members on another member's territory (e.g. DIN cannot actively
1215 promote the purchase of the DIN EN in Italy or any other member country of
1216 CEN). However, it may happen indeed that a German company buys the Italian
1217 adoption of the EN from UNI for language purposes for instance or simply
1218 because this is the market they are targeting and feel more comfortable in buying
1219 the Italian adoption of the EN. The fact that '*no active marketing outside own*
1220 *territory on another members' territory takes place*' is referred to as '*exclusive*
1221 *right in their own territory*'. However, it is non-exclusive when it comes to
1222 countries outside the CEN-CENELEC membership e.g. DIN and AFNOR may be
1223 competing to sell the ENs in Russia or any other county outside the membership
1224 of CEN and CENELEC;
- 1225 • NEN has the exclusive right in the Netherlands to distribute, sub-distribute,
1226 adjust, etc. the national transposition of the EN. NEN is the only entity allowed to
1227 exploit the IPRs from the NEN transposition ('implementation') of the EN. So, the
1228 obligation here is on NEN and the other NSBs, not on the customers (those that
1229 want to buy and use the EN). A person based in Belgium can buy the EN on NEN's
1230 website and use it. There is no territorial limitation for the customers. It is
1231 possible, and also justified by the different available translations: e.g. a French
1232 person working in the Netherlands who does not understand the NEN EN buys
1233 the French version from AFNOR;
- 1234 • There is no need for a software vendor to find agreements with different NSBs: if
1235 a standard is bought from a NSB and the software vendor is fine with its IPR
1236 conditions, then there is no need to ask to other NSBs;
- 1237 • "*This also means that the European Commission, to make a standard available free*
1238 *of charge, can sublicense from the NSB with the better price (according to the*
1239 *required use) its national implementation". This statement IS NOT CORRECT. This*
1240 *is in fact a hypothetical case (there is no such thing as a 'standard free of charge' –*
1241 *someone somewhere has to pay for it) which always refers to 'sponsored access'.*
1242 *An entity may ask for “sponsored access” in one country (the European*
1243 *Commission cannot find an arrangement with a single NSB only to cater for a*
1244 *'European' solution). Formally speaking, as it concerns one country, this*
1245 *sponsored access agreement will have to define which users will be granted “free*

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1246 access”; these users will be limited to the people living in the Netherlands ;
1247 French people won’t be “eligible” for having the standard free of charge.
1248

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1249 Figure 12 gives an indication of the major milestones in the start up of the work of PC434.

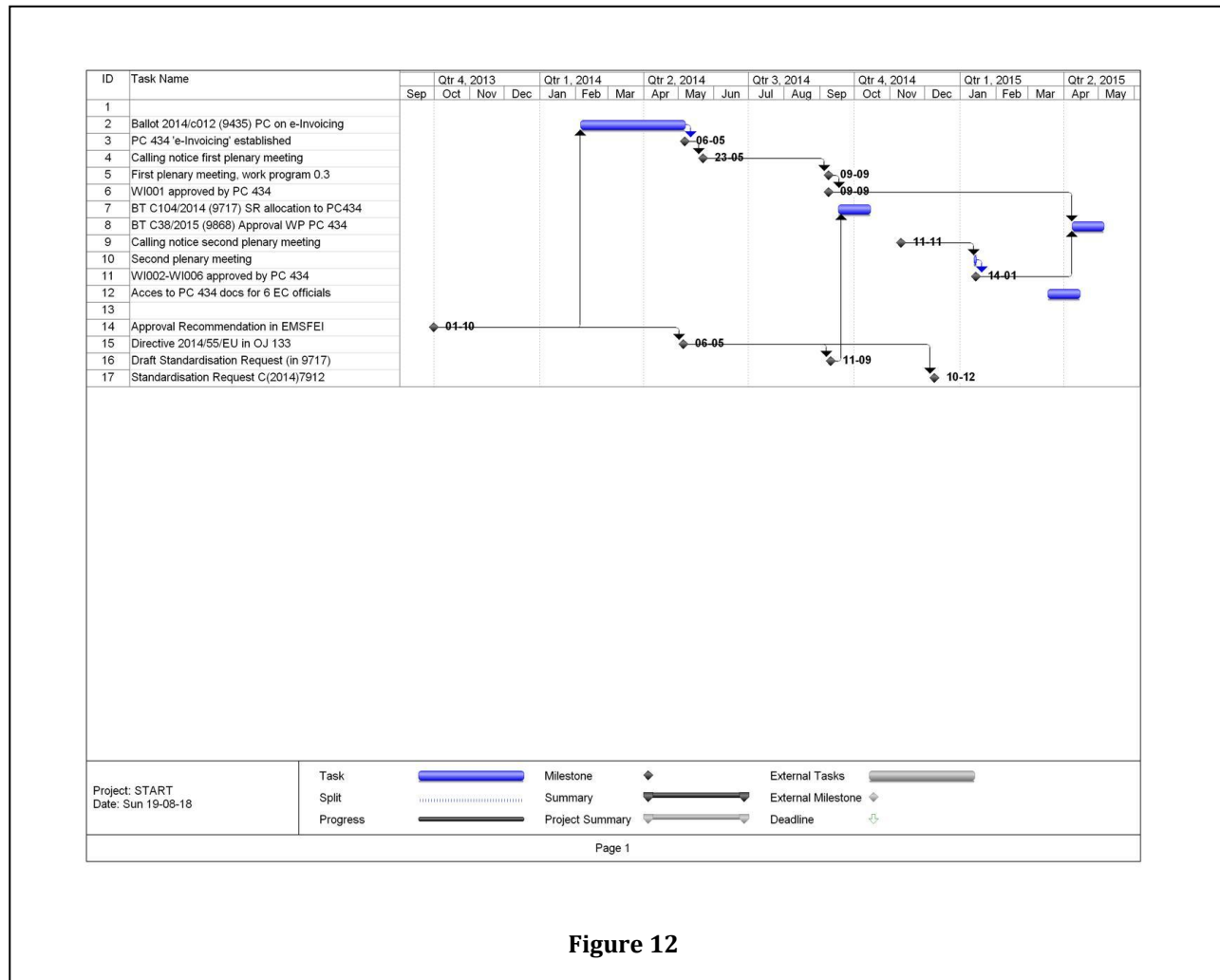


Figure 12

1250

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1251 **6.4.4 Over-all timeline of Directive 2014/55/EU**

1252 Figure 13 gives an indication of the major milestones in the over-all timeline of Directive 2014/55/EU.

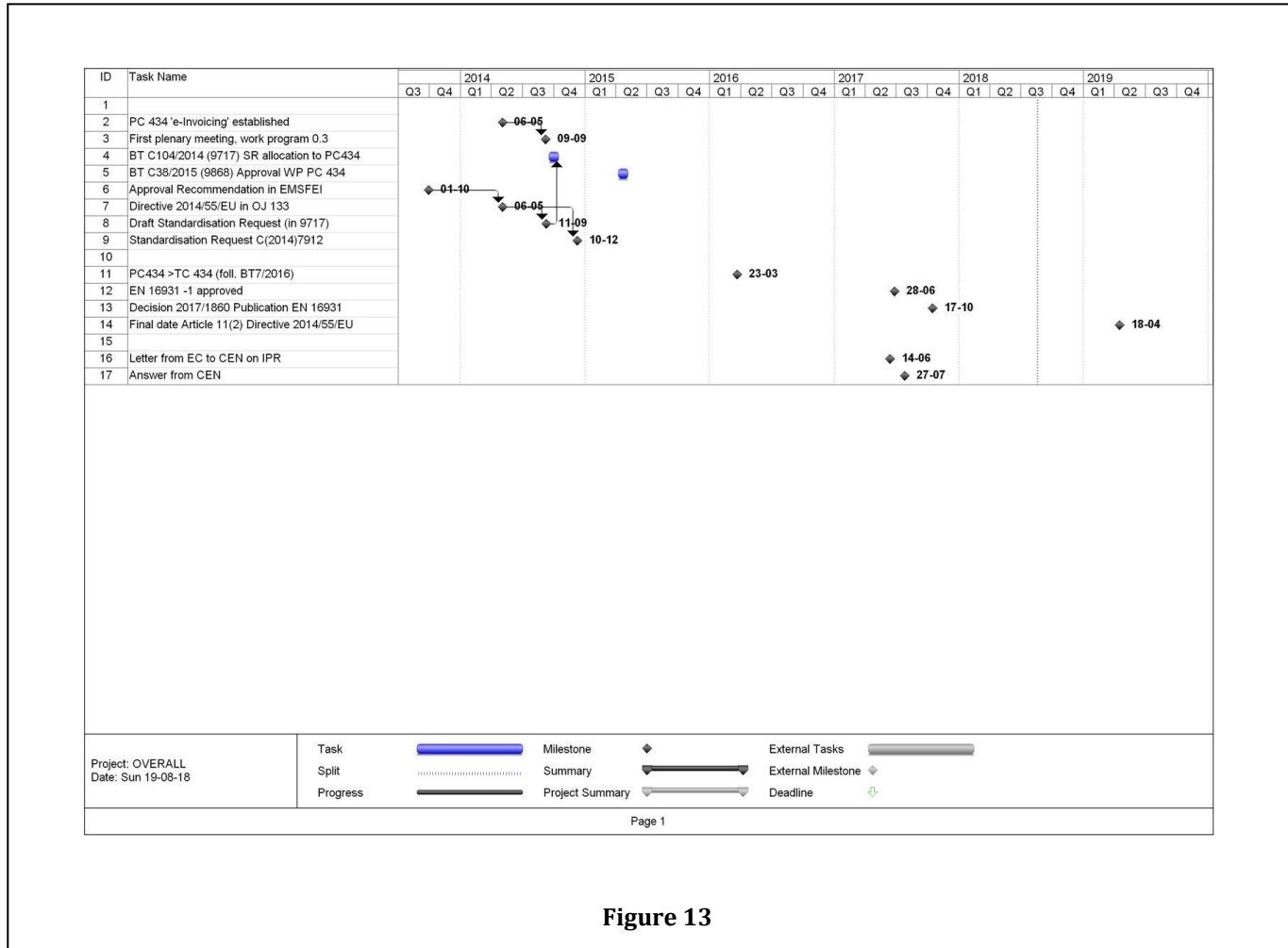


Figure 13

1253

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1254 **6.4.5 Overview of recent actions and initiatives**

1255 Figure 14 tries to provide an overview of recent actions and activities. For some, no documentation on follow-up could be found.

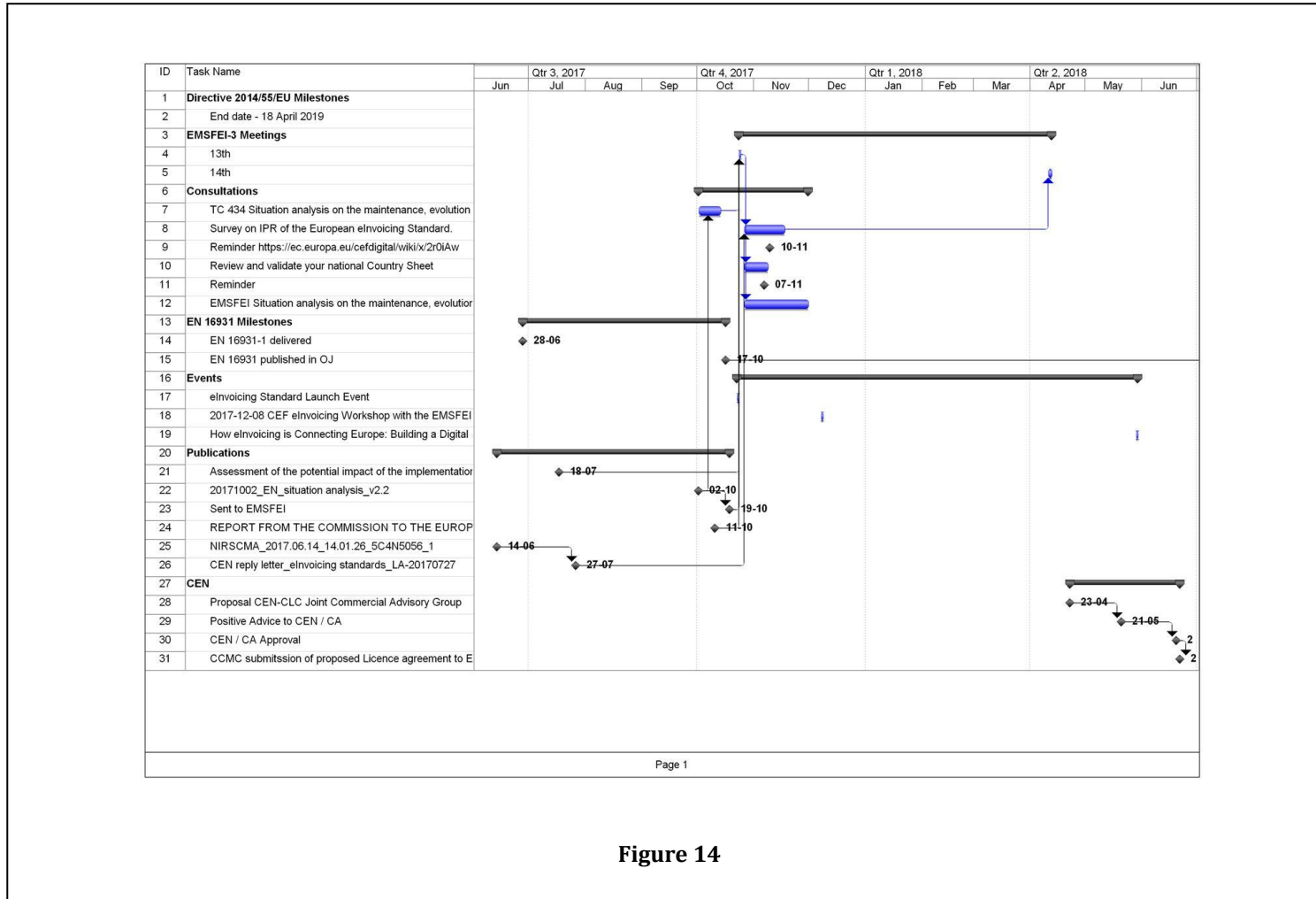


Figure 14

1256

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