



Standards and regulations: how can standards work alongside policies and regulations?

Workshop, 7 February 2013
BIS Conference Centre, London

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“We need to encourage governments and authorities across the world to use standards to achieve their aims.”



Summary

This BSI and ISO event, hosted in the conference centre of the UK government's Department for Business, attracted 94 registrations from 16 countries and international organizations.

The day comprised presentations from around the world and workshop sessions, to look at how standards and regulations are used in different economies, and to examine key lessons that can be taken from their use. National and international standards organizations could then consider recommendations for furthering the use of standards to support regulations.

Scott Steedman, Director of Standards for BSI, and Rob Steele, ISO Secretary General, opened the session, and Erik Wijkström, Counsellor, Trade and Environment Division of the World Trade Organization, gave the opening keynote address. During the day there were presentations from the European Commission, Russian Federation, Germany, USA, Netherlands, China, Zimbabwe and the UK. Three parallel breakout sessions in the morning and afternoon considered present perspectives on the use of standards to support regulations, and also what future measures might be needed.

Other features of the day included a table discussion session and 'ideas wall', where any thoughts could be posted throughout the day. Discussions focused on regulators' generally poor understanding of standards, and standards bodies' need to reach out to regulators in their own countries, and to encourage those in government to think differently about standards.

Other considerations included timeliness and general education about standardization, and a need to share best practice between national standards bodies. There was also a discussion on mandatory and voluntary standards, although the primary focus of the workshop was voluntary standards.

For the concluding discussion, Scott Steedman and Rob Steele were joined on the stage by Frans Vreeswijk, IEC General Secretary, to discuss the outcomes of the meeting, and to propose next steps.

It was clear from the content of the day's workshop that whilst there were many different perspectives on the use of standards and regulations, participants from across the international standards community perceived a value in encouraging governments and authorities across the world to use standards to achieve their aims.

Scott Steedman proposed the following steps:

- To initiate work on some new guidance materials to bring the existing documentation up-to-date.
- To make the UK a case study, or 'test case' and to share UK experiences with others.
- To establish a task group that may lead towards an international conference on the topic in 2014.

From left to right:
 Scott Steedman, Director of Standards, BSI
 Rob Steele, ISO Secretary General
 Erik Wijkström, Counsellor, Trade and Environment Division, WTO



Workshop report



1 Welcome session

1.1 Dr Scott Steedman, BSI Director of Standards

Scott Steedman welcomed delegates to the meeting and gave his reasons for wishing to host the workshop:

- Confusion over what is a standard and what is a regulation was a common theme in many countries, and boundaries between standards and regulations were becoming blurred.
- There was a value in re-stating the potential of true consensus-based voluntary standards to achieve regulators' aims whilst achieving industry buy-in.
- A widespread view of standards as quasi-regulation was prevalent in much of the business community, which then obscured the value of standards as a positive choice for businesses of all sizes.

The workshop would provide an important opportunity to share perspectives from around the world and to identify areas of good practice, and to show that standards permit organizations to share common expectations about goods and services.

It was hoped that by the end of the workshop, a way forward could be agreed among those present to examine this topic further and propose additional actions at the international level.

1.2 Mr Rob Steele, ISO Secretary General

Rob Steele added his own welcome and thanked delegates for attending.

He gave a brief introductory presentation about the ISO system, including existing guidance to standardizers and regulators on the use of standards and regulations.

He recalled the importance of standards to international trade, and particularly bilateral trade agreements, and drew parallels between good regulatory practice and good standards-making practice, and other considerations such as 'Regulatory Impact Assessment', as used in many economies around the globe, and whether these could take more/better account of standards.

2 Keynote opening address

Mr Erik Wijkström, World Trade Organization

Erik Wijkström, Counsellor, Trade and Environment Division, WTO, gave the keynote address.

He gave some perspectives on when standards were part of the problem, or part of the solution, the tension between obligatory and voluntary aspects of standards and regulations, and the role of standards in supporting the WTO's Technical Barriers To Trade (TBT) agreements.

He also considered issues such as how to 'use' a standard in regulations, and regulators' confidence in knowing that a standard had or had not been adhered to. He also considered issues such as the absence of international standards (for example for new technologies) and how this could drive regulators to find other approaches than standards.

Following Mr Wijkström's presentation, there were the following points of discussion:

- Finding appropriate consensus whilst balancing the needs of all stakeholders and appropriate levels of consultation. It is the process for standards development that is important.
- A continual need to strive towards more openness and transparency and thus improve consensus, always seeking to make the best use of technology. This was a fundamental difference between an international standard and a consortia standard. A number of countries' governments are now using consortia standards for IT procurement: ISO and IEC and their members need to remember that standardization is competitive and to continue to involve as many relevant stakeholders as possible.
- Standards as victims of their own success: whether rigid application, and a 'one size fits all' philosophy works for all organizations (noting, however, a difference between standards containing management requirements and those with specific and absolute safety criteria).

3 Morning session

The global landscape – how are standards and regulations used around the world?

3.1 Presentations

3.1.1 Ms Silvia Vaccaro, DG Enterprise, European Commission

Silvia Vaccaro gave a presentation on the European context, and how standards and regulations work together in Europe, principally via the voluntary 'new approach' system, where standards provide one means of conformity with 'essential requirements' of European directives. This was important to ensure the free movement of goods and services within the European internal market whilst protecting consumers. She detailed how the process works and recent changes to the 'Standardization regulation' in Europe.

3.1.2 Dr Grigory Elkin, Director General, GOST R, Russian Federation

Grigory Elkin gave a presentation on the changing environment around standards and regulations in Russia, which had moved from a system of 'mandatory' standards before 1993 towards a system of voluntary standards (between 2003 and 2007) to the present situation which was akin to the EU's 'New Approach'.

3.1.3 Dr Torsten Bahke, Director, DIN, Germany

Torsten Bahke gave a perspective from DIN, focusing in particular on aspects such as accessibility of the German standardization system and the German Copyright Act, which recognizes DIN as the copyright-holder in its standards. He also gave some perspectives on the relevance of standards for the legislator.

3.1.4 Dr Mary McKiel, Standards Executive, Environmental Protection Agency, USA, delivered by Gary Kushnier, ANSI

In Dr McKiel's absence, Gary Kushnier of ANSI delivered her presentation, which focused on US policy for government departments to use voluntary standards where possible, via the Office of Management and Budget's Circular A-119, which was currently under consideration for revision.

Discussion

Following the presentations, there were discussions on the contrasts between the German and US systems: the US government has asked some SDOs to make copies of standards referenced in legislation available online, whilst the German government has always had a clear view that it couldn't do what DIN does, having neither the money nor the will to do it. The DIN system also requires the private support of industry in order to function, both financially and in terms of business 'buy-in' to the standards.

3.2 Discussion session (breakout and feedback)

Participants broke out into groups to consider the question: 'Thinking of your own country or business domain, where have standards and regulations worked well together? Where have things worked less well? Why is this, do you believe?'

The rapporteurs for each group reported back on a number of issues:

- Successes of the present system included the European 'New Approach' and other areas where it was important for companies to demonstrate compliance with health and safety issues. In the US, the regulatory landscape for medical devices was another example of good practice.
- Difficulties of the system included where experts were 'driven away' from the process if standards became regulations, or where over-regulation could hamper innovation. Confusion also existed around dated and undated references to standards.
- New ways needed to be found to engage with and reach out to regulators, to help them to understand the value of standards.
- Regulators did not necessarily consider standards at the outset of their processes, and so standards may have to 'fit in' with something they have already decided: it would be better to have discussions with them earlier in the process to optimize the fit between standards and regulations.

- It is important to ensure that markets understand the difference between standards and regulations.

Following the report back there was further discussion on the following:

- Regulators' understanding of conformity assessment was often poor. For example, in the UK it could often seem that the prevailing attitude was that 'Government does it best'; however, whilst a more intelligent use of conformity assessment techniques could bring advantages, there was no effective agreement about this at present.
- Drivers for conformity assessment could include risk management; this can entail costs through test requirements, and then there is the question of an acceptable balance of costs for business.
- The IEC conformity assessment system for explosive atmospheres, where there were good connections with regulators and good understandings among all parties of their respective roles could provide a useful example.



4 Afternoon session

What is the future for standards and regulations?

4.1 Presentations

4.1.1 Dr Piet-Hein Daverveldt, Managing Director, NEN, Netherlands

Piet-Hein Daverveldt gave an overview of the Knooble case in the Netherlands, which concerned the use of standards to support regulations. The case had led to a ruling in the Dutch supreme court that NEN standards were not generally binding provisions issued by the government and therefore were not free from copyright.

4.1.2 Ms Yu Xinli, Vice Administrator, SAC, China

Yu Xinli's presentation showed the use of 'mandatory' standards in China, and the contrast between mandatory and voluntary standards as detailed in Chinese law. Mandatory standards are used explicitly as a means of fulfilling legal requirements, in areas such as safeguarding health and safety, and the system had been in use for over 50 years.

4.1.3 Mrs Eve Gadzikwa, Director General, SAZ, Zimbabwe

Eve Gadzikwa showed how standards and regulations work together in Zimbabwe, with examples from specific areas where standards supported regulation: bottled water, food quality, sanitary/phytosanitary measures, energy, environment and imported pre-packaged goods. Voluntary standards are important from Zimbabwe's perspective as an emerging and recovering economy.

4.1.4 Mr Richard Parry-Jones, Chairman, Network Rail, UK

Richard Parry-Jones spoke from his experience at Ford and at Network Rail. He noted how standards were essential tools for free trade and observed that where possible, international standards should be used to promote trade and international competitiveness. He felt that voluntary market-led standards are a better tool than regulations to drive innovations.

Discussion

Following the presentations, there were discussions on the following issues:

- Pressures to make standards referenced in legislation available for 'free' or on a compensated basis were fraught with potential complications. The current standards system worked on the basis of international and European standards being essentially voluntary in nature, with copyright vested in the standards bodies. Any challenges to this model would require new ways of financing the development of standards, and should probably not form part of the debate about how to make the most effective relationship with regulators.
- The issue of how to support better uptake of standards among SMEs, and how to make the standards-making process more sustainable.
- Promoting uptake of standards through the procurement process, and helping regulators to 'take advantage of' their home NSB.



4.2 Discussion session (breakout and feedback)

Participants broke out into groups to consider the question: 'How can we be clear about different characteristics of standards and regulations? How can we maximize the value of standards to work with regulations?'

The rapporteurs for each group reported back on a number of issues:

- The need to distinguish clearly between voluntary and mandatory standards.
- Standardizers need to work closely with regulators (but not for them) and their focus should be on outcomes to be achieved.
- Need to maintain openness and transparency of the standardization process.
- Help regulators to understand that standards are their 'workhorse' – a tool for them to use (one tool among many).
- Communicate to regulators the value of standards.
- The need for early engagement with regulators and for regulators' involvement around the standards table (also can standardizers participate in regulators' committees?).
- The need for a coherent approach across all sectors.
- Standardizers need to develop a library of case studies to prove how standards and regulations have worked in the past.

Report back from breakout rapporteurs



5 Concluding discussion session

5.1 Table group discussions

Participants in the room then discussed some of the key issues in their table groups, and presented key findings/conclusions back to the group, to answer three questions: 1. 'What needed to be done, and who should do it?'; 2. 'What are the obstacles and risks?'; and 3. 'How to achieve objectives'.

1) What needs to be done, and who should do it?

Responses to this question were as follows:

- To **engage and educate regulators and politicians**. To do this there was a need to have a consistent approach and to articulate clearly how regulations and standards can enhance one another. To be of optimum use, there was also an issue of timing: any standards-related activity to support regulations needed to be not too early, and not too late.
- There was a **need for case studies to demonstrate best practice** to promote better education across governments about standards and to demonstrate clear messaging about the role of standards. Standards bodies should benchmark against each other to ensure a consistent message. Forums could be organized between standards-makers and regulators to find out what regulators need from standardizers.
- **Early engagement of public authorities by standards-writing committees** could open up regular communication channels with governments and help standardizers to 'speak government language'. It could also help to identify standardizers' priority areas and match them against government priorities. How far can standards-makers use others, such as industry bodies to fight the 'standards corner' in government.
- Ensure that, **when policy makers have an objective, they reach out for standards automatically**. This should start with NSBs at national level and make use of government and industry champions to spread the word, and help both regulators and industry to see that standards provide a more flexible option.

2) What are the obstacles and the risks?

Responses to this question were as follows:

- There was a need for stable, consistent messages that can be adapted to local needs. Without this, there was a **risk that regulators will seek to write standards themselves**.
- Resources needed to be found to spread the message and to find the right forums to engage with to hear this message. **If standardizers don't explain the benefits, this could lead to further regulatory burdens on business.**
- The shifting nature of government personnel meant that there was a **need to ensure multiple and repeat contacts** and to find the right level within government with which to engage.
- **There can sometimes be a problem with the language that standardizers use – even the word 'standard' can be misinterpreted.** Culturally, the way standards are used is very different around the world.
- There are also risks around the **volume** of potential work and the resources available to standards bodies. This could be mitigated to some extent by making better use of the existing network of experts.
- Promoting the role of standards could mean **trying to persuade governments to give up parts of their work to the market.**

3) How to achieve these objectives

Responses to this question were as follows:

- There was a need to ensure that the voluntary nature of standards was retained where possible, and to work with legislators to try to **remove unnecessary binding references to standards**.
- In parallel, when legislation is removed or altered, can standards-bodies work with regulators to see **how voluntary standards could provide an alternative to regulation?**
- Standards bodies themselves may have to invest resources in reaching out to regulators, and a web forum could be developed between standards bodies to share best practice.

5.2 Agree actions and priorities, next steps

For the concluding discussion, Scott Steedman and Rob Steele were joined on the stage by Frans Vreeswijk, IEC General Secretary, to discuss the outcomes of the meeting, and to propose next steps.

It was clear from the content of the day's workshop that there were many different perspectives on the use of standards and regulations together, but also that participants from across the international standards community perceived a value in promoting the use of standards to governments and authorities across the world to achieve their aims.

Scott Steedman proposed the following steps:

- To initiate work on some new guidance materials to bring the existing documentation up-to-date.
- To establish a task group that may lead towards an international conference on the topic.
- To make the UK a case study, or 'test case' and to share UK experiences with others.

Rob Steele, Frans Vreeswijk and Scott Steedman thanked the participants for their contributions during the day and Scott Steedman drew the meeting to a close.

Annex: The ideas wall

These ideas were contributed to the ideas wall during the day (edited for language and sorted into themes).

Dialogue

A number of delegates drew attention to the need for dialogue between standards makers and regulators, especially at national level. This is needed to clarify the distinctions between policy objectives; the mandatory regulations needed to achieve them; the voluntary standards that offer a non-exclusive means of compliance; and the conformity assessment and other processes by which compliance can be verified.

Individual contributions:

- We need to create a forum for standards makers and regulators to agree the purpose and shape of the 'joined-up' solution (whether for safety, environment or other issues) within each trading block.
- How can we improve the notification system on WTO/TBT issues in our country, given that Zimbabwe is driving intra-regional trade and trade with the EU through Interim Economic Partnership Agreements (iEPAs)?
- How can we facilitate the participation of government and regulatory authorities in standards development?
- We need more effective engagement between standards makers, policy makers and regulators.
- NSBs need to engage with their governments to explain why mandatory standards should be avoided wherever possible and why the NSBs' IPR needs to be respected (otherwise there is a risk that the standards infrastructure will be undermined).

Education

This dialogue needs to be backed by an education programme for all parties affected by regulation and standards. In addition, both regulators and standards makers need to know what policy objectives are being formulated so they can each determine the role that they should play in their achievement.

Individual contributions:

- We need to develop an 'elevator speech' which encapsulates how regulations and standards are mutually supportive, provided they respect some 'dos' and 'don'ts' (e.g. standards focus on 'how' and should not be used too early or too late). Standards must enable innovation, so the 'presumption of conformity' principle is important.
- We need awareness programmes for consumers, governments and regulators, industry and in particular SMEs.
- We need to explain conformity assessment mechanisms to regulators as well as standards
- We need to be explaining, educating and informing on the impact of potential changes in policy on both regulations and standards.





Information and analysis

Dialogue and education need to be backed by further information and analysis. Some delegates asked if we really understand the current situation and have a clear methodology for determining appropriate roles and responsibilities.

Individual contributions:

- We should organize a collection of data on references to standards in regulation at the international level (an international global portal).
- We should set up a working group for the revision of UNECE Recommendation D: "Reference to Standards".
- We need to ask in which area of regulation standards can be of most help. The possibilities are so vast that we need to focus on where the greatest value can be created, so as to bring clarity to confusion.
- We need to classify regulators and regulations on the basis of agreed criteria so as to determine what is most appropriate: regulation or reference to standards.
- How well are regulations actually enforced?

Better regulation and better standardization

The analysis should aim at a better definition of the role of regulation and identify improvements to both the standards process and the actual standards, so that regulators will feel able to reference them with more confidence. There was wide agreement amongst delegates that regulators need to be more actively involved in standards development.

Individual contributions:

Better regulation

- Regulators must explain why they are not referencing standards – and publish the reason for free.
- What are the respective roles of standards and regulations in managing risk?
- The focus must be on policy outcomes and how standards makers can work alongside regulators to define an effective solution in each case.
- The option of using standards should be included in any consideration of what is needed to meet a policy objective. There should be a clear statement of the measurable outcome.
- We need to persuade governments to prune their legislation of any unnecessary binding references to standards.

Better standardization

- The concept of an 'inclusive standards development process' implies that regulators should always be participating in standards committees.
- Regulators must participate in the standards making process.
- We need a holistic approach to standardization, especially across sectors.
- We need a better way to determine what standards are needed and who should be developing them. Wherever possible the work should only be done once. There is still a duplication of effort because it suits the needs of individual or organizations with vested interests to protect.
- Is it possible, before international or European standardization work even commences, to specify any contradiction in national legislation and draw attention to it?
- We need to understand the impact that dominant financing partners have on the (real) neutrality of a standards body.
- We must remember that consensus is not always 'best practice'. This is not necessarily a problem, so long it is understood.
- How can standards' presentation and format facilitate their use by governments and regulators?
- The level of detail in standards needs to be appropriate to as many stakeholders as possible.
- We must ensure clarity in standards to allow consistent interpretation through certification which supports regulation.

Access to referenced standards: the NSB business model

The wider and more consistent use of voluntary standards to support regulation does raise the issue of the terms on which they are made available to those who need to consult them and the business models that can ensure their continued development. Some participants made a robust defence of the current business model but others urged standards makers to consider new and innovative approaches.

Individual contributions:

- What does the customer need to access: the relevant part of the regulation; the relevant part of the standard; other relevant information, such as guidance, FAQs etc.?
- If standards are to be referenced in legislation then any charge will be seen as a barrier to their use. We also need to consider conformity and certification, which needs evidence of compliance.
- How can we compensate for reference to standards developed in another country or region?
- What would a 'Freemium' model look like in the standards world? Could it lead to a wider use of standards?
- We should look at the potential of Digital Rights Management to provide creative solutions. How can we act in a co-ordinated way?
- Is the question of whether standards should be chargeable or free the real issue? Should there be a different question: "How do we fund standardization to maximize the uptake and deployment of standards without stopping the development process?" Do we need a paradigm shift?
- Rather than trying to save our business, why not offer our services for better regulation and so develop the business in a new way?





Two advantages of standardization

Two delegates drew attention to inherent advantages of standardization that policy makers and regulators should recognize.

Individual contributions:

- Standardization is open and transparent and any compromises are directly related to the topic in question. Regulatory compromises are often the result of horse-trading between completely unrelated topics: "If you support me on this topic, I will support you on another." This raises the issue of who is the real legislator and what influence lobbyists have on the shaping of laws and regulations?
- As government agencies come under budgetary pressure and make staff cuts, NSBs can offer knowledge-brokerage and expertise that is no longer available in the ministries.

Regional differences

Two delegates expressed concern that other delegates seemed to think that one solution or one set of priorities was applicable in all circumstances and all regions.

Individual contributions:

- We should recognize the differences in regulatory approaches in different blocks of countries and create a standards/regulatory structure on the basis of mutual respect for different systems.
- Some developing countries are concerned that international standards are actually becoming barriers to trade when they are referenced in regulation (e.g. carbon foot printing and social responsibility). How can we address this important issue?

About BSI

BSI (British Standards Institution) is the business standards company that equips businesses with the necessary solutions to turn standards of best practice into habits of excellence. Formed in 1901, BSI was the world's first National Standards Body and a founding member of the International Organization for Standardization (ISO). Over a century later it continues to facilitate business improvement across the globe by helping its clients drive performance, manage risk and grow sustainably through the adoption of international management systems standards, many of which BSI originated. Renowned for its marks of excellence including the consumer recognized BSI Kitemark™, BSI's influence spans multiple sectors including aerospace, construction, energy, engineering, finance, healthcare, IT and retail. With over 70,000 clients in 150 countries, BSI is an organization whose standards inspire excellence across the globe.

About ISO

ISO (International Organization for Standardization) is the world's largest developer of voluntary international standards. ISO international standards give state of the art specifications for products, services and good practice, helping to make industry more efficient and effective. Developed through global consensus, they help to break down barriers to international trade. Since being founded in 1947, ISO has published more than 19,500 international standards covering almost all aspects of technology and business. From food safety to computers, and agriculture to healthcare, ISO international standards impact all our lives.

About BIS

The Department for Business, Innovation & Skills (BIS) is the UK government department for economic growth. The department invests in skills and education to promote trade, boost innovation and help people to start and grow a business. BIS also protects consumers and reduces the impact of regulation. It has approximately 2,500 staff plus another 500 people working for UK Trade & Investment in the UK. Partner organizations include nine executive agencies employing 14,500 staff.



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For further information, please contact:

Daniel Mansfield
Head of Policy Engagement
BSI
389 Chiswick High Road
London
W4 4AL
UK

T: +44 20 8996 7750
daniel.mansfield@bsigroup.com
bsigroup.com