

Response to Corporate Europe Observatory (CEO)

CEN-CENELEC is in the process of writing standards that are considered part of EU law. Yet the process is not very transparent. There are no minutes of meetings and there is no list of participants. Participants are bound by extensive confidentiality rules. Does the Commission think this allows for appropriate democratic control and accountability?

The transparency of the standard-setting process is a key principle to standardisation organisations. It is notably one of the World Trade Organisation standardisation principles, and it is part of the CEN-CENELEC Code of conduct which is being reminded at the start of each meeting and respect to which is mandatory for all participants.

Even though the minutes of meeting and the list of participants are not made available to the general public, these documents exist and are shared with expert members participating in the standard-setting activities of CEN-CENELEC. The list of members, with their contact details and their National Body affiliation, is available on the online platform of CEN-CENELEC and can be accessed by all members. The meeting minutes, with the participants of the meeting, are also uploaded after each meeting on the same platform.

For both personal data protection and copyright reasons, these documents cannot be shared broadly with the general public. Nevertheless, interested individuals and organisations can always register to their National Body and ask to participate in European standardisation activities to have access to this content.

The European Commission encouraged national public authorities (in particular through the Committee on Standards and the subgroup of the AI Board dedicated to standardisation) to follow the process closely, as well as stakeholders to also join the process.

Finally, please note that the European Commission is working closely with CEN and CENELEC, but we do not speak for them, nor do we interfere in their way of working. CEN and CENELEC are private law bodies whose relation to the Commission is formalised in Regulation (EU) N° 1025/2012 on European standardisation. CEN and CENELEC notably have reporting obligations to the Commission. However, the Commission is not responsible for the content they produce or the way in which they produce it. The Commission is only empowered to review standards once they are drafted, to decide to endorse them or not.

It is the first time that harmonised standards are used to develop standards which explicitly address fundamental rights issues. Previously this has focused primarily on product safety. Was this considered when proposing a reliance on harmonised standards for the AI Act? Is there a risk in putting this into the hands of private stakeholders?

The Commission is aware that the integration of fundamental rights into a product safety regulation such as the AI Act might appear as a new challenge that needs to be addressed properly in the development of harmonised standards.

In view of the importance of aspects related to the protection of fundamental rights, we have already taken a number of measures. The standardisation request to CEN and CENELEC contains strong references to the inclusivity of the process and the need to gather expertise in fundamental rights.

Several stakeholder organisations and experts in fundamental rights are actively participating in standardisation activities for the AI Act, much more than for other product safety regulations. These include organisations such as ANEC, ETUC, 5Rights, Equinet, Algorithm Audit, and so on.

The European Commission is also strongly involved in the standardisation process, much more than usual. We have several EU officials following discussions and monitoring the ongoing work, to ensure that the standardisation deliverables are aligned with the objectives of the AI Act.

Our research has identified 143 participants in JTC21, more than half of which are from corporate actors or consultancies. Academia (16%) and civil society (9%) are a minority. Does the Commission have any official figures on the actors? Does the Commission believe different societal interests are sufficiently represented – especially considering that standards will deal with fundamental rights? How does the Commission safeguard standard-setting from capture by a few large companies (in particular by Big Tech firms)?

The inclusiveness of the standard-setting process is a priority for the European Commission. This is reflected in the Regulation (EU) N°1025/2012, in the EU Strategy on Standardisation presented in 2022 (see COM(2022)31), as well as in the AI Act and the standardisation request issued in 2023. The Commission does also provide financial support to the participation of various stakeholders. Organisations listed in Annex III of Regulation (EU) N°1025/2012 receive financial support to participate. Additional grants have also been launched to improve the diversity of the process. This includes the StandICT.eu initiative which provides funding to experts in need, or action grants meant to recruit external experts from societal organisations, academia and SMEs. We have also called on National authorities to participate directly in standardisation work to ensure that all interests are well represented.

We acknowledge that the industry still represents the majority of participants, however, this is also a functional feature of standards which are highly technical and should take into account inputs from industry. On precise figures, the Commission has access to the list of all registered members, which is higher than what you mention, with more than 200 experts. CEN-CENELEC recently created a task force on “inclusivity” that is currently working on producing these statistics, but we do not have official figures as of now.

Even if further improvements are still possible, we believe that our efforts have already produced some results. As mentioned, the number of experts coming from societal organisations and civil society, especially experts in law and fundamental rights, representing consumers and workers, are clearly more numerous than for other safety regulations.

A plenary meeting in February 2024 of the JTC21 was hosted by the NSAI and Microsoft in the Microsoft office in Dublin. Is there a conflict of interest in allowing Microsoft to host such a meeting?

Microsoft is participating actively in CEN-CENELEC standardisation work, alongside many other organisations, public and private alike. The plenary meetings are in-person meetings throughout the year where hosting is done by one National Standardisation Body, such as NSAI in Dublin, on a rolling basis. The National Body oversees the organisation and can choose the venue. In Dublin, the venue was in Microsoft office, but at the following plenary in Bath, the event was hosted by the university.

Does the Commission have concerns over the JTC21's reliance on ISO standards, considering that at the ISO level there is less representation from other societal actors such as SME's, academics and civil society? JRC reports have indicated there are important elements where international work is not aligned with the AI Act. Does this pose any concerns for the development of standards?

The objective of the Commission is to ensure the availability of harmonised standards which will provide technical specifications covering comprehensively all elements of the requirements introduced in the Regulation.

The standardisation request (which was accepted by CEN-Cenelec) includes clear provisions on this point and the question of the interplay between international and European standardisation activities.

In that context, the Commission has been very active in clarifying some issues posed by some existing international standards, which provide interesting guidance but do not appear appropriate to address the specific objectives of the AI Act. This notably concerns ISO/IEC 42001:2023, which does not align with the AI Act, for instance on the notion of risk, which is understood by ISO as organisational risk, and not risk to health, safety and fundamental rights, such as in the AI Act.

However, some international standards might still be aligned with European interests, partly because they have been developed with a strong participation of European experts, taking into account the necessity to align with European law. These international standards can be adopted by CEN-CENELEC and presented to the Commission for the assessment which will provide presumption of conformity.

It is important to keep in mind that the standards delivered by CEN-CENELEC will be subject to an assessment by the European Commission and will be cited in the Official Journal only if they properly address the objectives of the AI Act and adequately reflect the requirements for high-risk AI systems. Additionally, a number of other safeguards exist to ensure some control over the process, such as the possibility for Member States and the European Parliament to object to harmonised standards, as per Article 11 of Regulation (EU) N°1025/2012.