

Monday 16 January 2012

Re: AmCham EU's comments on the IPR aspects of the proposed EU Regulation on Standardisation¹

To Whom It May Concern,

The American Chamber of Commerce to the European Union (AmCham EU) supports efforts to ensure that Europe develops an efficient standardisation framework that stimulates innovation, investment and growth. In this context, AmCham EU believes that the European Commission's Regulation as presently drafted is a balanced and carefully crafted document.

As accepted by the European Commission, standardisation is a voluntary, market-led activity. As such, it is important that the Regulation safeguards the underlying function of the system to create the right incentives for firms to participate and, where applicable, contribute their technology to standardisation efforts. One aspect of the proposed Regulation is to enable direct referencing of standards and technical specifications coming from informal fora and consortia, as well as from the existing formal European standards organisations (ESOs). Another aspect of the Regulation is to enable SMEs to actively participate in standardisation and to enable contribution of their technology solutions to standards bodies.

In setting out conditions for the direct referencing of standards and technical specifications developed in fora and consortia (see the 'attributes' in Annex II), the draft Regulation seeks to ensure a neutral environment for 1) contributing technology to standards bodies and 2) disseminating that technology, both highly relevant in fostering SMEs' involvement in European standardisation. It does so through two key mechanisms:

Firstly, the requirements, in paragraph 2 in Annex II, that standards bodies have an open decision-making process accessible to all interested stakeholders; have a collaborative and consensus based process that does not favour any particular stakeholder; and that the process is transparent to ensure a level-playing field.

Secondly, the requirement, in paragraph 3(c), is that licensing of technology protected by essential intellectual property rights (IPRs) take place on a fair, reasonable and non-discriminatory basis (FRAND), which includes the option to license without monetary compensation at the discretion of the IP owner. A similar IPR attribute was set out in the Commission's 2008 White Paper 'Modernising ICT Standardisation in the EU - the Way Forward' and received broad support. The FRAND framework is recognised in the

¹ COM (2011) 315 Final, dd. 1.6.2011: Proposal for a Regulation of the European Parliament and of the Council on European Standardisation and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and of the Council

Commission's 2010 Horizontal Cooperation Guidelines and in the EP's 2010 Own Initiative Report on European standardisation. The FRAND framework is also already employed by the ESOs.

By requiring that licensing of technology protected by essential IPRs take place on a FRAND basis, the draft Regulation 1) brings the framework proposed to be applicable to fora and consortia in line with that already applicable to formal ESOs, 2) allows firms to obtain a return on their technology investment through licensing on fair, reasonable and non-discriminatory terms, or to provide their technology royalty-free if they so wish and 3) ensures business model neutrality.

In conclusion, AmCham EU believes that the Regulation, as presently drafted, and the attributes set out for recognising fora and consortia in particular, is successful in ensuring that the system provides a balanced framework for and encourages participation and contribution in standardisation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hendrik Bourgeois', written in a cursive style.

Hendrik Bourgeois
Chair – American Chamber of Commerce to the European Union