



International Organization for Standardization
 Organisation internationale de normalisation
 Международная организация по стандартизации

Ch. de Blandonnet 8 | CP 401, 1214 Vernier | Geneva, Switzerland | T: +41 22 749 01 11 | central@iso.org | www.iso.org

Kevin McKinley

Deputy Secretary-General

Your ref.

Our ref.

Date

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The Austrian Parliament

(e-mail:

begutachtungsverfahren@parlament.gv.at

The Federal Ministry of Science, Research and
 Economy (BMWFV), Dept. I/11
 (e-mail: post.i11@bmwfv.gv.at)

Draft Austrian Standards Law – non-compliance with the conditions of ISO membership

To the Austrian Parliament and the Federal Ministry of Science, Research and Economy:

We take this opportunity to comment on the draft Austrian standards law that has been notified according to Directive 98/34 under number 2015/320 A.

We are concerned that the requirement of this draft standards law as currently written will lead to the **non-compliance of the Austrian Standards Institute (ASI) with the conditions of ISO membership concerning copyright of international standards.**

The draft Austrian standards law stipulates that national Austrian standards made mandatory by Act or regulation shall be published in their entirety and will be considered a free work in the sense of Section 7(1) of the Copyright Act. By definition, national standards include national adoptions of international standards. The draft Austrian standards law also stipulates that the National Standards Body must work through its ISO membership to achieve as free access as possible to all standards adopted as mandatory in Austria.

ISO's copyright policy (POCOSA) stipulates that ISO and its members are **not to make ISO Standards available for free** (see Clause 3.1 of ISO POCOSA, available at https://dl.dropboxusercontent.com/u/7757520/Other/POCOSA_2012_E.pdf). ISO's Code of Ethics also reinforces ISO members' adherence to these conditions for the reproduction and distribution of ISO Standards. While we welcome reference to our standards in regulation or legislation, we insist that this cannot alter copyright in ISO standards. ISO POCOSA also requires all ISO members to protect ISO's name and intellectual property in their country. Making ISO standards available for free in Austria, including through national adoptions of ISO standards, would **violate ASI's membership obligation to ISO.**

Such violation of the above obligation by ASI could ultimately lead to the suspension of ASI's membership in ISO, the consequence being that ASI would no longer participate in the ISO standards development process, nor be allowed to use ISO standards for national adoption, reproduction or distribution. This could impact on Austria's ability to comply with provisions of the WTO Technical Barriers to Trade (TBT) Agreement. The TBT Agreement stipulates a Code of Good Practice for standards development, appropriate participation in international standards development, as well as the use of relevant international standards as a basis for technical regulations to create a fair and predictable trading environment.

Furthermore, the WTO TBT Agreement states that “Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice.” ASI’s lack of involvement in ISO, resulting from its violation of its membership obligations, would severely limit its ability to adhere to these provisions.

As a result, we express concern regarding restrictions that this draft Austrian standards law would have that could severely hamper ASI’s ability to maintain its participation in ISO in a manner that is stable and representative of relevant national stakeholders. We are also concerned that this draft law may jeopardize ASI’s ability to participate effectively in the fulfillment of ISO’s new Strategy for the period 2016-2020, given the potential 5 year-limited authorization for ASI to act as a National Standards Body.

We respectfully request that you take the above serious international implications into account in your review of this draft standards law. With your permission, we may in the near future provide further detailed comments on the draft law, if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin McKinley', with a stylized flourish at the end.

Kevin McKinley
Deputy Secretary-General

cc: Austrian Standards Institute (ASI)