



CEN-CENELEC GUIDE 31

Competition law for participants in CEN- CENELEC activities

Edition 1, 2015-12



European Committee for Standardization

Tel: +32 2 550 08 11

Fax: +32 2 550 08 19

European Committee for Electrotechnical Standardization

Tel: +32 2 519 68 71

Fax: +32 2 550 08 19

Avenue Marnix 17
1000 Brussels – Belgium

www.cen.eu

www.cenelec.eu

www.cencenelec.eu

Contents

1 Scope 4

2 Competition law and standards 4

3 DOs and DON'Ts for participants in meetings of governing bodies, technical bodies and other advisory or experts' groups 5

4 What to do if you suspect anti-competitive behaviour 7

1 Scope

CEN and CENELEC are European standardization organizations providing a platform for the development of European Standards and other consensus-based deliverables, with the objective of removing technical barriers to trade, promoting the European economy in the global market, and protecting the environment and the welfare of European citizens.

They are formally recognized by EU Regulation 1025/2012 on European Standardization as the “European standardization organizations”, but recital 13 of the Regulation acknowledges that *“European standardization organizations are subject to competition law to the extent that they can be considered to be an undertaking or an association of undertakings within the meaning of Article 101 and 102”* of the Treaty on the Functioning of the European Union (TFEU).

This means that the members and stakeholders of CEN and CENELEC are not exempt from the provisions of competition law when participating in standards development and other CEN and CENELEC activities.

CEN and CENELEC have already developed detailed rules, procedures and guidance documents to ensure compliance with all relevant European and national laws, including competition aspects. This Guide therefore complements the existing rules, by listing some specific DO’s and DON’Ts to help ensure that all persons participating in CEN and CENELEC activities are complying with competition law. However, it does not attempt to describe every detail of European or national competition laws, nor can it cover all conceivable issues or circumstances that might arise. The list of DO’s and DON’Ts has been established in coordination with ISO and IEC and following some exchanges of information with ETSI.

If you have any doubt about the legality of any activity in which you are involved, or anything you observe, do not hesitate to contact your legal department and/or the Legal Affairs department of the CEN-CENELEC Management Centre (CCMC) at legal@cencenelec.eu.

2 Competition law and standards

European and national competition laws are intended to ensure that companies can compete on a level playing field and that customers are not disadvantaged by any arrangements between them. They ensure that competition in the market is not distorted and that markets operate as efficiently as possible.

Standardization has similar aims. CEN and CENELEC provide a platform for stakeholders from different types of organizations, including companies in competition with each other, to meet and work for the common good. It is crucial that participants in standards development do not behave in an anti-competitive way, because this will lead to a loss of trust in the integrity of the whole standards system.

Be aware that all forms of anti-competitive behaviour are prohibited by law, even when they are unintentional.

Competition rules prohibit many different practices, including any agreement between competitors on pricing or on the customers each may serve, any agreement that prevents new entrants to the market and any arrangement that excludes specific technologies or products from the market.

Breaches of these rules, even if they are unintentional, can have serious consequences for the individuals concerned, as well as for the organizations they represent and, ultimately, for CEN and CENELEC. Violations can involve substantial civil and legal liability and might result in civil and criminal liability and punitive penalties that exceed the economic damage caused.

This Guide is intended to help people avoid all breaches of competition law, including the unintentional ones.

In the European Union, the basic competition rules are detailed in the TFEU¹⁾ under Article 101 (e.g. cases of cartel agreements and concerted practices between companies restricting or distorting competition) and Article 102 (cases of abuse of a dominant position).

A number of implementing Regulations and Commission Guidelines have also been adopted, either by the Council of the European Union or by the European Commission, to clarify in detail the framework of the application of competition rules²⁾. National competition laws provide for similar rules.

3 DOs and DON'Ts for participants in meetings of governing bodies, technical bodies and other advisory or experts' groups

In order for CEN and CENELEC to fulfil their mission as European standardization organizations, it is necessary for CCMC staff, and the staff and representatives of the national members, to prepare, organize and attend meetings, both at a governance level and a technical level.

It is in these meetings that there is the greatest potential for deliberate or unintentional breaches of competition law. This is especially true at the technical level, where the meetings will often include experts and other participants from organizations that are in competition with each other, each having legitimate interests to protect or defend.

The CEN-CENELEC statutory rules, Internal Regulations and Guides provide extensive guidance on the organisation and operation of the CEN and CENELEC governing bodies and their advisory groups, as well as and on the activities of Technical Committees and Working Groups. Nonetheless, in addition to these detailed rules, all participants are encouraged to be familiar with the list of DOs and DON'Ts set out below.

DOs

- **Do** always remember that one of the main purposes of European standardization is to support competition within the European Single Market, for the benefit of industry, consumers and other societal stakeholders.
- **Do** follow CEN-CENELEC Internal Regulations³⁾, [Part 1](#) (Organization and Structure), [Part 2](#) (Common Rules for Standardization Work) and [Part 3](#) (Rules for the structure and drafting of CEN-CENELEC publications) as relevant, as well as the related publicly available guidance documents, which may all include provisions relevant to compliance with competition law.
- **Do** review and clear the agendas of meetings in advance, to ensure that the subjects to be discussed are consistent with competition law, and then adhere to these agendas during the meetings.
- **Do** consider carefully if a potential (or actual) exchange of information has any value in predicting or determining the future commercial behaviour of a participating competitor, and if it you think it might do so, then do not share it.
- **Do** feel free to use and share information that is already publicly available.

1) The same provisions can be found in Articles 53 and 54 of the European Economic Area (EEA) and are therefore applicable in all States of the EEA.

2) More information on European legislation on competition law, guidelines and compliance can be found on the European Commission website at the following address:

<http://ec.europa.eu/competition/antitrust/legislation/legislation.html>

3) See: <http://boss.cen.eu/reference%20material/RefDocs/Pages/default.aspx> or <http://www.cenelec.eu/membersandexperts/referencematerial/internalregulation.html>

CEN-CENELEC Guide 31:2015

- **Do** take seriously any issue that you suspect has been improperly raised in a meeting and may be in breach of competition law, state that you cannot discuss this matter, terminate the conversation, and keep a record of what was said for reporting to your own company or organization legal advisor and to the CCMC Legal Affairs department, as soon as possible after the meeting.
- **Do** take immediate action if the anti-competitive behaviour continues by insisting that the Chairperson:
 - a) suspends the meeting while the offending participants are removed, cautions the other participants that such behavior cannot be tolerated or, if necessary,
 - b) adjourns the meeting.
- **Do** ensure that any notes of meetings, regarding matters that may raise competition law concerns, accurately reflect the discussions.
- **Do** refer to [CEN-CENELEC Guide 10](#) ⁴⁾ 'Policy on the dissemination, sales and copyright of CEN-CENELEC Publications' when the distribution and sales practices of CEN-CENELEC standards are discussed in the meeting.

In addition, if you are an expert attending a meeting of a CEN-CENELEC technical body:

- **Do** ensure that you and other participants that attend meetings have the necessary technical expertise.
- **Do** limit discussions in meetings only to technical issues and only share information that is necessary to meet the standardization objectives.
- **Do** refer to [CEN-CENELEC Guide 8](#) ⁵⁾ 'CEN-CENELEC Guidelines for Implementation of the Common IPR Policy on Patent (and other statutory intellectual property rights based on inventions)' when there is a possibility of patents being included in a standard.
- **Do** ensure that the standards development process is as open and transparent as possible when participating in meetings of a technical body and when exchanging information.

DON'Ts

- **Don't** fix any prices, or discuss any conditions related to pricing, with competitors, or exchange commercially sensitive information that is not publicly available which could influence their own business strategies.
- **Don't** engage in any market sharing with competitors, including allocation of territories, customers, distributors, or suppliers.
- **Don't** take for granted that particular practices or behaviours are compliant with competition law until this has been confirmed by a competent legal advisor.
- **Don't** joke about competition law.

In addition, if you are an expert attending a meeting of a CEN-CENELEC technical body:

- **Don't** include elements in standards that exclude suppliers or competitors from the marketplace for any reason other than technical considerations.

4) See: <http://www.cencenelec.eu/standards/Guides/Pages/default.aspx>.

5) See: <http://www.cencenelec.eu/standards/Guides/Pages/default.aspx>.

- **Don't** use “the objective of standardization” as an excuse to request competitors to reveal sensitive market, strategic or business information or as a reason for you to provide that type of information to the meeting.

4 What to do if you suspect anti-competitive behaviour

Everyone involved in CEN-CENELEC is encouraged to be vigilant in respect of possible anticompetitive behaviours.

In case of doubt, always keep all relevant evidence. Competition authorities attach great importance to written communications and their powers of investigation allow for the seizure of all relevant documentation, including email. This is often the principal source of evidence in their prosecutions.

If you have doubts or concerns that you, or someone else, may have engaged in anti-competitive behaviour, or might do so in future, as a result of participating in CEN-CENELEC activities, do not hesitate to contact your legal department and/or the Legal Affairs department of the CCMC at legal@cencenelec.eu.