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# Governing Standards: The Rise of Standardization Processes in France and in the EU

OLIVIER BORRAZ\*

*The rise of standardization processes highlights two different paths toward a regulatory state. Within the EU, the New Approach serves as a model for co-regulation, and European standards have become instruments of supranational governance. In France, standardization is much more part of a renegotiation of the state's role and influence in a changing society. In both cases, standardization was undertaken with other motives; yet it evolved to answer the strains and constraints exerted upon regulatory processes in the two polities. As such, standards are a case for unintentionality in policy instruments.*

There is practically no economic activity nowadays that is not framed, whether partly or totally, by standards. Their extension is closely related to economic globalization and the transformation of regulatory processes at the international, regional, and national levels—even though historically they often precede these phenomena. Our interest in standards is the result of their influence on economic activities along with the fact that their underlying logic resonates with political and economic processes that can be observed worldwide.

According to the International Organization for Standardization (ISO), a standard is a “document established by consensus that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context.” Where a good, a service, or a procedure is concerned, there is almost always at some level—national, European, or international—a document defining the form it should take. Standards enable them to circulate, to be compatible with other goods, services, or procedures, or even to be made predictable in nature. Hence, the strengthening of free trade is favorable to their development.

Standards can fall under two categories: *de jure* and *de facto* standards. A *de jure* standard is a written document establishing technical specifications for goods, services, or processes, resulting from a consensus, and whose application is voluntary. It is designed to fulfill coordination functions through production (by giving producers information useful in

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designing new products) and exchange (by making explicit the specified properties of a product). A *de facto* standard results from a unilateral act and emerges through the mediation of market processes: “the dynamic in which purchasers on a market take up particular products finally leads to one or more lasting standards being selected from among diverse possible alternative technologies” (Lelong and Mallard 2000, 20). The software and hardware architecture of personal computers (PCs) is an illustration of a *de facto* standard, while the Global system for Mobile communication (GSM) protocol in telecommunications is a *de jure* standard because it “was drawn up as a result of collective activity within the framework of a standards institute, in which the leading actors in the telecommunications sector took part. Its appearance has actually involved coordination mechanisms alternative to, or additional to, the dynamic of the market alone” (21). In what follows, we shall be mainly interested in *de jure* standards.

As public policy instruments, standards<sup>1</sup> present several characteristics. Although often highly technical in nature, they are actually the product of a balance of power between economic actors (competitors or subcontractors) as well as between economic actors and nongovernmental organizations (NGOs) (such as consumer or user groups) within civil society. Thus, they contribute to a shift in rulemaking from the state to civil society. The legitimacy of standards derives from a scientific and technical rationality (which helps to neutralize their political significance) along with a democratic rationality (through their negotiated dimension). Thus, they offer the appearance of depoliticization (Jobert 2003). In other words, the development of standards forms part of a trend that sees public authorities delegating to private organizations the enactment of rules that, even if they do not have the force of law, are no less binding in nature. This movement is all the more legitimate, seemingly, because it is surrounded by references to the democratic nature of the process of drawing up standards and to the scientific and technical data on which they are based. In a way, standardization could amount to a pacified decision-making process because it leaves the matter to the interested parties, without political intervention. The terms “technological democracy” (Hawkins 2000) or “technical diplomacy” (Cochoy 2000) have been used, critically, to characterize this process.

Yet, our interest in this category of instrument results from their inscription within a regulatory framework. In this respect, France and the EU offer the opportunity to compare the role of standards in two very different polities, both moving toward a form of regulatory state. What does the rise of standardization processes tell us about the nature and content of such a state? Apart from issues of depoliticization and incentive rather than normative-based instruments, is there something else that can be learned from the study of standards? I want to argue that this is the case on four accounts: re-regulation, intentionality, policy-capture, and the management of complex issues.

The development of standardization processes can contribute to a form of “re-regulation” (Majone 1996). Even though part of a deregulation movement, standards simultaneously contribute to a proliferation of rules framing economic activity. Thus, according to the French Standardization Association (AFNOR<sup>2</sup>), a standard “is a public policy tool that acts as a supplement to regulation and a reference point for opening up public markets and promoting their transparency.” While the European Parliament specifies that “standardization can constitute an effective, generally acceptable and readily adaptable supplement to legislation, and can in some cases, if given a clear legal framework, provide an alternative to binding rules and regulations.”<sup>3</sup>

In fact, standard-setting is a clear case of “meta-regulation,” in which “direct intervention and enforcement are replaced here with allegedly lighter demands on economic actors to institutionalize processes of self-regulation” (Jordana and Levi-Faur 2004, 7), allegedly because in fact this type of regulation often proves to be as intrusive as direct intervention aimed at monitoring and enforcing competition. Furthermore, this trend is congruent with the advent of the regulatory state, and such notable features as “the proliferation of new mechanisms and techniques of regulation, meta-regulation, and enforced self-regulation” (Levi-Faur and Gilad 2004).

The question of intentionality is central to the study of instruments. As the two cases presented in this article will make clear, standards are instruments that “open new perspectives for use or interpretation by political entrepreneurs, which have not been provided for and are difficult to control, thus fueling a dynamic of institutionalization” (introduction to this issue). Hence, they contribute to stabilizing collective action, by making the actors’ behavior more predictable, but simultaneously they offer new opportunities along with new resources for actors to pursue other goals. At the European level, standards were initially conceived as an instrument of intergovernmental politics destined to quicken the pace toward the achievement of a single market, but they progressively opened perspectives for a more integrated approach and became an instrument of supranational governance for the European Commission. In France, following a series of crises that revealed major dysfunctions within the state, along with a restructuring of the state in a context of economic globalization and European construction, administrative authorities saw the use they could make of standards in regulating highly complex and interdependent domains, or in promoting French economic interests on a wider scale. Thus, standards became an instrument of state transformation. In both cases, these developments were not initially intended. But the standardization process opened perspectives which public administrations seized to uphold their interests.

The study of standards also enables us to revisit the thesis of the “policy capture” of decision-making processes by economic interests because standardization explicitly provides for industry representatives

to participate in drawing up rules that concern them. This can be seen as an answer to the growing problems public authorities face in obtaining detailed knowledge of the activity they wish to regulate. Yet, there is a difference between, on the one hand, a situation where lobbies negotiate measures favorable to them directly with French public authorities or the “continued institutionalization of interest intermediation” by the European Commission (Mazey and Richardson 2001, 92) and, on the other, the constraint for lobbies to negotiate a compromise with other interest groups under limited possibility for public arbitration. Such a development, in fact, strengthens the public authorities’ situation because it protects them from most of the pressures but still gives them the capacity to have a say on the outcome of negotiations.

Finally, standards occupy a special place in relation to the crisis of legitimacy affecting public intervention, the complexity of the issues tackled and the theme of accountability in public policy—and they raise new questions of legitimacy, efficiency, and accountability.

Governments as political actors can use resources from both the public and private sector to bolster their regulatory goals and pursue their objectives. The willingness to delegate important policy-making powers is in large part a recognition that regulation is not achieved by simply passing a law, but requires active involvement of regulated firms. Because regulators lack information that only regulated firms have, firms themselves are acting like governments, by establishing regulations and codes of conduct in economic, environmental, and social areas. The growth of such business self-regulation is difficult to equate with the usual definitions of regulation perceived in terms of government activity, since it crosses the boundaries between providing a mix of public, private, or collective goods. (Egan 2001, 6)

This article will show that standardization processes play a different role with regard to the strains and constraints exerted upon French and EU regulatory processes. In this respect, standards are not neutral devices but instruments that produce specific (and sometimes unintended) effects, depending on the regulatory framework within which they take place.

The first section of the article begins by constructing the object “standards.” The second section then reports on the place of standard-setting in the European integration project. The third section will focus on France and the recent growth of standards in service activities. The conclusion will attempt to distinguish the varying status and effects of standard-setting in different regulatory contexts.

## 1. Defining Standards

Standards share four major characteristics: they are the result of a work carried out among interested parties, they are based on scientific and technical data, they rely on consensus, and their application remains voluntary.

1. The concept of interested parties is extremely variable because it may come down to just a given sector of industry or include consumer and user representatives, public authorities, and experts. In his history of standardization in France, Cochoy (2000) distinguishes between a period when industry alone invested in standardization and a period when, through the impetus of AFNOR, consumers joined the committees, starting a profound shift in the areas covered by standards. At the EU level, European standards institutes provide for the participation of various representatives: from trade unions, consumer groups, local governments, national government officials, individual firms, and trade associations. Standard-setting thus constitutes a procedure in which the participants have formally the same rights and the same influence. However, there are generally profound inequalities between them in terms of access to information. Furthermore, scholars of standardization processes stress that chairing or acting as secretary to a standardization committee offers a strategic position, from which it is possible to determine both the agenda and the pace of work—two defining resources in influencing the final outcome.
  
2. Even though the process of standardization brings together interested parties, their exchanges are based on scientific, technical, or experimental data (Joerges, Ladeur, and Vos 1997). Jacobsson (2000, 40) stresses that standardization relies on expert knowledge: “standardization is closely linked to expertise and is usually motivated by the view that there are some persons who know best. . . . Reference to expert knowledge is often used to give standardization legitimacy.” This is evidenced by the fact that participants in expert committees are nominated for their knowledge in the field concerned. “The committees provide a forum for those with considerable knowledge in a particular field to work together” (Egan 2001, 143). However, there is still a very wide variation between the participants’ levels of expertise and—even more so—their resources to mobilize scientific and technical data: it is very often the largest firms, which have their own interest in standardization, that provide the data on which the discussions are to be based, while small and medium enterprises (SMEs) rarely have the capacity to take an active part in standardization work, and NGOs are often in a dependent situation.

The importance of scientific and technical data, apart from leading to a strong distinction between participants, also acts as a formal constraint (Mallard 2000). Although a standard stems from a compromise based on political, economic, and social criteria, only its technical elements are made visible. Putting these technical elements forward in the discussion allows the exclusion of other criteria from the debates or obliges such criteria, once they have become

the object of a compromise, to be expressed in technical terms. This acts as a constraint essentially at the development stage, notably for those participants who do not have a mastery of all aspects or are not in a position to make counterproposals. Once the standard is put into practice, on the contrary, industry actors are able to reintroduce some flexibility in interpreting the technical data (Majone 1975 in Egan 2001).

3. Consensus is a core principle of the standardization process. All documents and all observers refer to it, the latter in order to emphasize its ambiguous nature. Consensus is most often understood negatively: it is the opposite of voting; it does not necessarily imply unanimity. In other words, to use an ISO definition, it is a "general agreement characterized by the absence of definite opposition to the essence of the subject from a large part of the interests in play and by a process of seeking to take into consideration the views of all those concerned and to reconcile possible but divergent positions." Therefore, consensus occurs when, at the end of a process in which the different parties have been able to express their expectations and integrate them into a proposed standard, no participant is openly opposed to this proposal. As long as one party is opposed, the approach cannot be carried through to its end; this very often results in processes that extend over several years and require long negotiations. This is because standard-setting is not a repetitive, iterative game, but a unique one: once the standard has been adopted, it becomes irreversible. The participants cannot adopt a strategy of short-term loss or sacrifice for a deferred gain or a time-shifted "quid pro quo" (Egan 2001, 144). The result is a document that links the interests of the various parties and is binding on them all, following a participatory process that establishes the standard's legitimacy: "writing a standard is much more than an activity for producing technical information and specifications: it contributes actively to the convergence of the socio-technical networks that constitute the standard's coordinating framework" (Mallard 2000, 26).
4. The final characteristic of standards is that they are presented as voluntary. Here, we are in the realm of what Morand (1999) calls "incentive acts," that is, "acts that direct behaviors without making them compulsory" (162). Economic actors are not obliged to comply with a standard, and they are not subject to any sanction. Standardizers "must convince potential adopters that they would benefit from following the standards" (Brunsson and Jacobsson 2000, 13). This can be contested, on three accounts. First, industrials must often show that their product, service, or activity conforms to the regulatory requirements or meets the quality and safety criteria: EU directives refer to standards in this respect, but industrials can always

choose to demonstrate compliance through other means. Second, in some cases, regulation explicitly references consensus-based, privately developed standards as bases for gauging compliance with the regulation. Third, regulation can even make standard-compliance compulsory (the French *normes d'application obligatoire*).

Furthermore, because many standards are accompanied by markings ("NF," "CE") that certify they observe a set of conditions, because they may be required by the authorities or requested by potential customers, and finally because they are part of the circulation of goods on increasingly extensive markets, the incentives to become involved in standard-setting are strong. While failure to conform to provisions contained in a standard can lead to a firm's certification being withdrawn—with consequences potentially more costly than a fine. Moreover, a judge can refer to a standard when assessing an industrial's liability. Finally, some standards acquire force of law at the international level, such as *Codex Alimentarius'* standards, recognized by the Sanitary and Phytosanitary agreement of the World Trade Organization (WTO): countries are not compelled to respect these standards but then risk facing litigation within the WTO.

Contrary to what these four features could indicate, standardization is neither a neutral nor a peaceful process. But it offers a specific framework for solving conflicts. The diverging interests, tensions, and conflicts are settled through negotiations and at an interpersonal level. "In general, . . . participant accounts of such committees typically emphasize compromise, teamwork, and sharing information, rather than how these bodies deal with conflicts" (Egan 2001, 143). While it is obvious that these committees are characterized by profound resource inequalities, it is equally obvious that the dominant actors have no interest in taking advantage of their position to impose their views on the other participants. In taking this approach, they have to enter into information-sharing, take into account requests, and seek compromise, which allows them to increase the value of their resources while gradually involving the other parties. This is a long, exacting task, in which any attempt to rush decision making may lead to blocking. In fact, this is very often the case. However, it can be hypothesized that these are powerful learning tools for participants, who learn to work together (Kessous 2000, 114).

Consequently, the constraining nature of a process that obliges the various participants to take into account the interests of the others may counter the partially founded criticism that sees these committees merely as parodies of "technological democracy," in which powerful, perfectly organized economic interests (industrial or national) manage to impose their point of view under the guise of consensus.

In the area of standardization ". . . all actors . . . do not merely try to seek confirmation for previously formed views, but frequently enter committee discussions without clear preferences, or are prepared to change their positions. This

does not mean, however, that positions and interests play no part whatsoever in committee negotiations. Nevertheless, in a significant number of cases, the main focus was upon the discussion of a problem where solutions had to be found without those participating being able to fall back upon pre-formulated positions. Moreover, . . . comitology operates as a long-term oriented process of working and learning, that has a potential, over time, to condemn and overcome individual attempts on the part of participants to impede reliance upon valid knowledge. (Joerges 1999, 320)

## 2. The European “New Approach”

On May 7, 1985, the European Council adopted a *new approach to technical harmonization and standards* (Resolution 85/C 136/01). Up to then, technical harmonization had been covered by directives or by the mutual recognition procedure. But the technical complexity of the subjects concerned, the difficulty of bringing all countries into agreement, and the single-market perspective encouraged the European authorities to take recourse to standard-setting.

The 1985 Council Resolution is based on the conclusions approved by the Council of July 16, 1984, which read: “The Council believes that standardization goes a long way towards ensuring that industrial products can be marketed freely and also towards creating a standard technical environment for undertakings in all countries, which improves competitiveness not only on the Community market but also on external markets, especially in new technology.” The objective, therefore, is to bypass obstacles to free movement.

The 1985 resolution was supplemented by another resolution on a global approach to conformity assessment, dated July 24, 1989. In the context of this new approach, European legislation became responsible for establishing the essential requirements to which products must conform, while the European standards institutes (CEN, CENELEC, ETSI<sup>4</sup>) were charged with drawing up technical specifications in order to ensure conformity to defined thresholds or levels of protection.

This wider use of standards comes at a particular moment in European history. This can be observed on two accounts.

First, several writers associate the development of standards with the limits of the European integration project from the 1980s onwards. Thus, according to Brunsson and Jacobsson (2000), the choice of standards rather than directives stems from the difficulties encountered by European institutions in imposing compulsory measures. The recourse to standards is therefore a response to the absence of any constraining means at the EU’s disposal to accompany its regulatory activity—an absence for which the incentives linked to the application of standards can compensate. Other authors suggest that the use of standards is a consequence of the Commission’s difficulties in arriving at agreement between the member states in a number of fields. In support of this thesis, they cite the delay in drawing up directives for the 1992 single market.

The creation of a single market by 31 December 1992 could not have been achieved without a new regulatory technique that set down only the general essential requirements, reduced the control of public authorities prior to a product being placed on the market, and integrated quality assurance and other modern conformity assessment techniques. Moreover, the decision-making procedure needed to be adapted in order to facilitate the adoption of technical harmonization directives by a qualified majority in the Council.<sup>5</sup>

Second, the recourse to standard-setting is an intrinsic feature of the rise of a European “regulatory state” (Majone 1994, 1999). The same reasons that played a part in that rise—budget constraints, bureaucratic, and economic interests, poor credibility of intergovernmental arrangements, the highly technical nature of regulatory policy making (Majone 1994, 92)—account for the success of standards. The same motives that led the European institutions to delegate powers to independent agencies also apply: cognitive factors (lack of expertise and competence), reducing the costs of decision making, and blame avoidance or blame shifting (Majone 1999, 3–4). In other words, standard-setting allows the public authorities to achieve credible political commitments, which take into account the phenomena of political and economic interdependence among nations and, at the same time, allows the behavior of multiple actors to be guaranteed other than by command-and-control techniques (5).

### **The Invention of the New Approach**

The New Approach is based on the distinction between essential requirements and technical specifications. A “New Approach directive” applies either to a broad, sufficiently homogenous range of products or to a horizontal risk; most often, it covers the risks linked to a family of product. “Essential requirements” define the results to be achieved or the dangers to be dealt with, without going into the content of the technical solutions needed to attain this (they are functional or performance standards, as opposed to prescriptive or specification standards: Majone 1996, 112). This avoids having to regularly amend directives to take account of technical progress because a product’s conformity is not assessed on the basis of the state of the art at a given time.

This distinction between essential requirements and technical specifications is not self-evident. It is not easy, at the outset, to conceive objectives without simultaneously providing for the means to achieve them. Furthermore, a move toward harmonization justified only on economic grounds could easily have been contested by national authorities and businesses anxious to preserve their own particular features.

On both accounts, the response was to put forward health and safety.<sup>6</sup> More precisely, the concept of risk became a vehicle for the setting of standards. It allowed broad objectives (reducing or eliminating all risk linked to the use of a product) to be laid down, and off-loaded onto the standards institutes the task of arriving at documents that, while integrat-

ing health and safety imperatives, also contributed to technical harmonization at the European scale and the competitiveness of European firms at the international level. This approach thus offered the advantage of leading more easily to an agreement between the member states and transferring the constraints of negotiation onto the standard-setting process. In dissociating general objectives from the means of reaching them, the Council wanted to avoid technical considerations (reflecting in fact economic, political, or social interests) disrupting the terms of requirements on which all countries must be able to agree. The payoff for this is a relative vagueness in the objectives: although the Council insists that requirements should be "worded precisely enough in order to create, on transposition into national law, legally binding obligations," directives often state very general objectives.<sup>7</sup>

The New Approach rests on several pillars, three of which should be mentioned here.

The first concerns standards institutes: CEN, CENELEC, and later ETSI must have suitable staff and infrastructure to carry through the setting of standards. The Commission negotiated mandates with them to make their role official, define their tasks, and set out the principles to which the European authorities are dedicated.

The second pillar concerns "the association of public authorities and interested circles (in particular manufacturers, users, consumers, unions)." This element, as well as stemming from the fact that legitimacy is at stake, reflects the Council's concern to extend responsibility for drawing up standards to the largest number of interested parties in order to ensure their efficient implementation. This pillar plays an essential role, among other things, in distinguishing the type of regulation promoted by the EU from traditional forms of corporatism in the different member states (Ladeur 1999, 157).

The third pillar relates to methods of monitoring standards: this is the object of the 1989 Council Resolution on a *global approach to assessing conformity*, supplemented by two Council decisions establishing detailed specifications for testing and certification procedures and providing guidance for use of the "CE" marking. Conformity is assessed on the basis of the manufacturer's internal activities for monitoring design and production; examination by an outside body of the type, design, or products; approval by an outside body of overall quality assurance systems.

The New Approach, nonetheless, faces an important limiting factor: there are markets in which the actors are not interested in setting standards. In this case, a directive has little chance of leading to technical specifications; two examples are building products and electrical plugs. As the Commission points out, "acceptance of standardization is related to the market relevance of standards, and not only to the participation of the parties concerned."<sup>8</sup> Therefore, if it does not want to go unheeded, any directive that delegates the definition of means and methods of

implementation to the standard-setting process must take into account the state of the market and of technological advances.

### **The Debates over European Standard-Setting**

Early in the 1990s, during the process of completing the single market, the Commission expressed reservations about the efficiency of standardization and suggested some modifications. During the years that followed, these reservations gave way to debates, in particular between the Commission, the Parliament, and the standards institutes. These debates took place in the ongoing tension between intergovernmental and supranational modes of decision making within the EU (Stone Sweet and Sandholtz 1998). Even though the Council and the Parliament, on the one hand, and the Commission, on the other, all agreed on the need to reinforce the role of standards, the latter saw these as a means to achieve more effectively and rapidly a single market, while the former aimed to maintain standard-setting within an intergovernmental framework of negotiation. While the Commission intended to promote standards as instruments of supranational governance, capable of bypassing national obstacles to the free movement of goods and services, the Council and the Parliament considered that standards could improve intergovernmental negotiations because they relied for the most part on technical arguments.

The Commission's reservations were of three types: delays in the standardization process, direct representation of interests, and monitoring standards compliance.

The main criticism addressed by the Commission concerned the delays, which were judged too long in the perspective of rapid harmonization. The Commission attributed this to the procedure and the concern to include the largest number of interested parties while still favoring consensus, instead of using qualified majority voting at certain stages. Several actors reproached the Commission for its failure to appreciate the conditions in which standards are drawn up. The Commission nonetheless remained steadfast in its criticisms, arguing that the problems lay in the institutes' preference for collegial functioning over project teams when drawing up proposals, in the length of the consultation and adoption procedure for standards, and in the obligation to transpose European standards to national level.

The institutes undertook to reduce the delays: from 45 to 28 months for ETSI, from 135 to 75 months for CEN; the result was an appreciable increase in the number of standards produced annually. Nonetheless, the Commission maintained that the delays remained too long and therefore suggested again that qualified majority voting be introduced at a stage before the final adoption of a standard. The Council and the Parliament took a stand against this proposal. This gave them the opportunity to reaffirm the principles on which the legitimacy of standardization process was based.

The Parliament “opposes the use of formal voting at an early stage of standardization activities with the objective of speeding the process up, since the European standardization process is based on mutual agreement, which in turn safeguards the participation, involvement and confidence of all parties.” (Article 9 of Resolution on the Report from the Commission to the Council and the European Parliament “Efficiency and Accountability in European Standardization under the New Approach.”)<sup>9</sup>

The Commission clearly wished to use standards as a means of achieving a single market with shorter delays. It could rely on the ETSI who, in the field of new technologies, was able to develop in a rather short time lag standards which were then used to uphold the move toward a single market, for example with the GSM standard in telecommunications (Sandholtz 1998, 152). But the two other institutes were more time consuming.<sup>10</sup>

Time is an inherent feature in the process of standardization. Delaying or blocking may reflect a deliberate strategy on the part of the countries chairing or providing secretarial services for a technical committee. Extending involvement to the largest number of interested parties also increases the “risk of deadlock and stalemate” (Egan 2001, 165): as long as one participant rejects all or part of a proposed standard, it cannot be ratified. Hence, either the participants do not manage to agree given the number of vested interests, or some have an interest in delaying or even preventing the appearance of a standard long enough to be ready (Kessous 2000).

On a more general level, the process of standard-setting is based on the interplay between reputation, credibility, and the ability to generate coalitions of interests (Foray 1995 in Egan 2001). Capacities for argument and belief in the participants’ competence and integrity are the determining modalities of this process, along with the networks in which the participants are involved. Consensus-seeking imposes an obligation to adopt procedures different from the ones used in deliberation, where the objective is in gathering a large enough majority. The standard-setting approach aims at bringing together the support of the different participants gradually. This process is easier in situations of “*copinage technocratique*” (Majone 1994, 91)—where the participants share interests and cognitive frameworks. Things are more laborious when it is necessary to create a climate of trust before entering into negotiations.

Each standard is by no means the best possible solution from a given set of alternatives, but rather reflects the complexity of the environment and the behavior of players to decipher and order the environment to produce some form of coordination. The outcome of the standardization process depends partly on the pay-off structure but also on the organizational dynamics, norms, and synergies within the standards bodies. . . . When multiple interests are involved, coordinating costs rise and the free-rider problem can be significant. Recognizing that by the time the committee is convened, participants often have vested interests that may be incompatible or well entrenched, committees,

like markets, may also be imperfect coordinating mechanisms. Despite efforts to promote trade liberalization by delegating to private standards bodies, the shift in regulatory strategy did not fully achieve the required policy outcomes. (Egan 2001, 209)

Relatively long timescales are therefore inherent in the standardization process. This is acknowledged by the Council and the Parliament, but clearly irritates the Commission.

Alongside a reduction in the delays, the Commission also proposed that national representation be challenged as the sole source of legitimacy in the standardization process, by opening participation to interested representatives in Europe sitting directly and no longer being appointed by national standards institutes—which would result, among other things, in improved participation for certain interest groups.

The acceptability of standards depends to a large extent on the full involvement of all relevant interested parties. Societal stakeholders' [stakeholders represent the interests of the consumer, health and safety, and the environment in standardization] participation in the standardization process has a strong accountability dimension. It reinforces the quality of the consensus and makes the standards more representative.<sup>11</sup>

Once again, the Commission was clearly trying to bypass the national level of representation, both in order to reinforce direct representation of stakeholders at the EU level and to progressively reduce the influence of member states on the standardization process. Not surprisingly, the Council and the Parliament did not go along with the Commission on this either. The Parliament pointed out that "the efficiency and transparency of the standardization process is not the responsibility of the European standards institutes alone but also of national governments, the Commission and national standards institutes, and is consequently the result of their joint efforts." Nonetheless, it indicated the need to improve representation of consumer and environmental protection organizations at the national and European levels. In 2002, the Council asked national institutes to "ensure the involvement of such parties in the process at national level."

The third and final reservation regarding European standard-setting has to do with the monitoring of standard implementation. Depending on the ways that notified bodies work in various countries (more than 1,000 bodies had been notified by 2002), standards compliance monitoring does not lead to the same degree of strictness; it may even enable hidden protectionism to be reintroduced in various forms. The member states are responsible for designation and notification as well as application of the criteria defined in the New Approach directives to evaluate a body's capacity to carry out the conformity assessment procedures. Yet, there is a lack of transparency concerning the criteria and procedures applied for the assessment and surveillance of notified bodies, and this encourages "suspicions about uneven levels of implementation" and undermines confidence in the certificates issued by notified

bodies.<sup>12</sup> Consequently, the Commission stressed the need to arrive at a homogeneous system of designating bodies, both “to ensure the safety of products and to avoid restrictions on the free movement of goods that could arise due to shortcomings in relation to the competence, impartiality, etc. of notified bodies” and “to allow notified bodies to compete on a level playing field.” It also argued that the supervision of notified bodies should be strengthened and a clearer separation achieved between designating authorities, accreditation bodies, organizations assessing conformity, and market supervisory authorities—because confusion between these functions is a potential source of conflicts of interest.

In this strategy, the laboratories responsible for certifying the conformity of products to standards for the whole Union occupy a special position.

In order to leave a broad initiative to businesses and to reduce costs, the laboratories—previously sole judges on their national market—are henceforth in competition with all the laboratories in the Community; moreover, each Member State is able to notify several of them, and recognition has been granted to the results of tests in different notified laboratories. The issue at stake in this mutual recognition is to avoid protectionism by standards being replaced by protectionism by the laboratories. The latter are therefore in an ambivalent position: guarantors of the sound application of European law, they are also subject to market pressures. This competition between laboratories conflicts with the quest for homogeneous application of technical tests—a condition for equitable competition, with each business able to go to the laboratory that interprets the standard most favorably for its products. (Kessous 2000, 94)

Consequently, the monitoring of standards is one of the chief factors currently limiting the success of standards.

However critical of the standard-setting process, the Commission was not deterred from extending the scope of standards to services. This is because the Commission fully supports any approach that may usefully supplement its regulatory action, in the perspective of an evermore effective single market.

The standards institutes, meanwhile, designed new documents with more flexible statuses. Workshop agreements, in particular, are the outcome of consensual work between a large number of parties, but they are not subject to the publication procedure or to a vote by national representatives; consequently, they are open to a larger number of directly interested parties (without having to go through the national standards institutes) and may be presented more rapidly. These workshop agreements are justified as a means of reducing the gap between, on the one hand, industry imposing its *de facto* standards and thus reducing the participation of interested parties and, on the other, the process of European standard-setting. Workshops are more flexible structures than technical standards committees, benefiting from greater openness and from consensus. Other more flexible documents such as guides, technical spec-

ifications, and technical reports, are designed to establish *de facto* standards. In the long run, all these documents are intended to become *de jure* standards, based on their efficiency and the economic actors' capacity to work with them. A workshop agreement may thus propose several competing solutions, leaving the market to select one; it may also simply provide information.<sup>13</sup>

The Council approved this development in March 2002. On this occasion, it stressed the necessity to relate these new documents to market needs and to convert documents that are not *de jure* standards into *de jure* standards. Commission, Council, and Parliament united around the idea that it is important to enlarge the field of standard-setting, as much in order to improve the functioning of the internal market as to contribute to various policies and actions.

### **The Standardization Process in the European Political Integration Project**

The New Approach does not extinguish European standard-setting—far from it. More than three quarters of European standards do not come under a directive but result from a market initiative. Nevertheless, all these standards and other more flexible documents are gradually forming a type of instrument based on consensus-seeking between the interested parties by privileging technical, scientific, or experimental data. These principles resonate with the other founding principles of the European integration project: consensus and the role of science in the decision-making process. The Council has stressed that “standards should have a high degree of acceptability as a result of the full involvement of all relevant interested parties in the standardization process and that standards should be coherent with each other. The Council also emphasized that standards should be based on sound scientific research.”<sup>14</sup>

Through the scope of standards and their extension to new fields, the European standardization process acts as a powerful harmonizing factor.<sup>15</sup> Furthermore, it forms part of a specific process of regulation, based on delegation by public authorities to private actors of responsibility for drawing up binding documents. These documents' robustness derives from the fact that they act as strong incentives while leaving some operators the possibility to innovate. In other words, observing a standard amounts to compliance with regulations, but with the proviso that an economic actor can always come up with another way of conforming to the regulations.

Consequently, we must wonder about the nature of a political system in which the rules are partly of private origin, based on consensus, and voluntary in application. The European Parliament itself points out that standards may in certain circumstances constitute an alternative to legislation. While the Commission situates the standardization process within the context of thinking on governance in Europe:

Current reflections on governance in Europe focus on alternative forms of regulation and on democratic legitimacy and expertise. Today, the Community's New Approach... is considered a well-implemented coregulatory model.<sup>16</sup>

Thus, it says, the New Approach is a model of co-regulation.

Co-regulation combines binding legislative and regulatory action with actions taken by the actors most concerned, drawing on their practical expertise. The result is wider ownership of the policies in question by involving those most affected by implementing rules in their preparation and enforcement. This often achieves better compliance, even where the detailed rules are non-binding.<sup>17</sup>

Hence, the task of legislation is to set objectives that can be attained and that remain stable. The essential requirements are those around which "no compromise is possible," states an internal Commission document (*The New Approach: quo vadis?*) By referring the definition of technical specifications to the standard-setting process, the legislature is no longer the prisoner of experts or even of interest groups working behind the scenes. It can thus reduce the risk of "policy capture" by organized interests. But the objective is also to reduce the gap between the EU and public opinion, pointed out in the White Paper on Governance, by opening up the decision-making process to a larger number.

In these conditions, the Commission proposes to enlarge the field of standards to the general safety of products, an approach "which reflects the contribution standards can make to the proper functioning of the internal market and the protection of consumer health and safety." Directive 2001/95/EC of the European Parliament and of the Council of December 3, 2001 thus provides that "[a] product shall be presumed safe as far as the risks and risk categories covered by relevant national standards are concerned when it conforms to voluntary national standards transposing European standards, the references of which have been published by the Commission in the *Official Journal of the European Communities*" (Article 3[2]).

The Commission also suggests the use of new documents in Community policies, whenever consensus has to be reached within a relatively short time. This, however, is conditional on certain principles being observed.

The Lisbon European Council stressed that business and citizens need a regulatory environment which is clear, effective and workable in a rapidly changing global market place, and that formal regulation is not always the answer. Alternative, complementary approaches can sometimes provide more effective solutions. The challenge is to ensure high levels of protection while avoiding over-regulation. The New Approach to technical harmonization and standardization is a model that combines these two requirements and the Council invited the Commission to examine whether the New Approach can be applied to sectors not yet covered as a means of improving and simplifying legislation wherever possible.<sup>18</sup>

However, in 1985, it was possible to identify sectors in which essential requirements could be dissociated from technical specifications, and, in doing so, to take the view that, in other sectors, the protection of the public interest made it necessary for legislation to impose technical specifications. Nowadays, with the rapid development of technologies, it is increasingly difficult to impose methods or techniques that will defend the public interest. The New Approach thus faces the challenge of being applicable to a whole set of objects that go beyond its initial framework.

### 3. The Standardization Process in France

Like the European case, the use of standards in France is a response to the difficulties encountered by the state in ensuring its tasks are carried out, whether they involve drawing up regulations, imposing them on all the actors in society, guaranteeing and monitoring their implementation, or measuring their effects. Furthermore, standards have developed in ways that situate them within the scope of Bruno Jobert's (2003) analysis: they are part of "a new mode of production of public policy no longer based so much on the imposition of norms created by state actors but on a systematized transaction between the different parties affected by the policy. . . . Legitimacy is no longer sought in the policy's conformity to central values but in the smooth functioning of the procedures governing the interaction" (see introduction to this volume). Standards constitute, as it were, the culmination of this process, a form of depoliticization of public policy.

Unlike the European standardization process however, which, from the outset, has set out the principles on which it is based, French standard-setting seems to be more part of a silent revolution.<sup>19</sup> The importance of standards still goes unrecognized in a number of sectors, disappearing behind the authorities' stated desire to maintain a capacity for intervention. Even though ministries encourage increasing use of standards in the sectors for which they have responsibility, official discourse continues to stress regulatory action: the food sector provides an illustration of this. In parallel, the authorities see standards as an efficient instrument of economic policy, which also enables some of the constraints of Europe to be circumvented: the growth in AFNOR's role is highly instructive from this point of view.

However, this dual instrumentalization conceals questions about the significance of standard-setting as a procedure: while the principles of consensus, participation and use of expertise play a major role in legitimizing European standards, they do not occupy as important a role in France. Here, in contrast, the chief stakes in standard-setting lie in the pooling of information between a grouping of diverse agents who have worked together or will have to do so subsequently. In that respect, the procedure for developing standards in France is far closer to a process of delegating the regulation of an activity to social actors—with public

authorities still in control—taking into account the interdependencies that bring the different actors together to draw up the rules by which their relations will be governed.

### **Standard-Setting and Regulation by the Private Sector: The Case of Food Products**

The food-production sector is characterized by the increasing role of private sector agents in creating and enforcing rules, notably in the management of food health safety. Standards occupy a determining place in this movement. Furthermore, the crises and scandals related to food safety during the 1990s did not alter this trend but, on the contrary, encouraged public authorities to further the delegation of power to private actors.

In 1983, the Law on Consumer Protection reaffirmed the need to ensure the safety of products for human health, strengthened the monitoring powers of the state services, and required firms to implement self-monitoring procedures. Given the lack of resources to ensure conformity to the rules enacted, as well as a preference for industry-led monitoring systems, the public sector defines objectives and thresholds, leaving private sector actors to adopt the necessary means and measures to comply with these and to enforce compliance. This makes the state's work easier when it comes to verifying that the procedures have actually been followed, while delegating the responsibility for exercising controls to the private sector. The objective was to guarantee food safety through a flexible system, adapted to the development of innovations, and to the free movement of goods. The same strategy was later adopted at the European level when the single market was established. France played a major role in the adoption of Council Directive 93/43/EEC of June 14, 1993, which lays down the general rules of hygiene for foodstuffs and requires that businesses adopt self-monitoring procedures based on the hazard analysis and critical control point (HACCP) method.

Thus, standards gradually spread across the food industry. With the food scandals of the 1990s, the public authorities were sustained in their increasing desire to delegate enforcement of compliance with the regulations through the use of standards to the private sector. The HACCP method is the best known: industry takes responsibility for the safety of its own processes, while the state's external field services monitor the application of the procedures at a secondary level. Quality assurance standards or approaches are another example, setting standards for means rather than for outcome: they define the stages of compliance, and often require the production of written, measurement-based data. These standards, as well as being public policy instruments, operate in three distinct registers.

First, they belong to the general context already described, in which the public authorities delegate the enforcement of regulatory measures to

private sector actors. Faced with increasingly extended, complex chains of interdependence in the food sector, with subject matter that demands a constantly updated scientific and technical mastery, and with lack of resources, the supervising ministries (Agriculture and Finance) rely on industry—producers and retailers—to take charge of regulating its own activity.

However, standards may also come to supplement regulatory action, without this having been provided for initially. This is the case when regulation does not achieve the objectives laid down for it in terms of risk reduction, as was the case with the Decree of December 8, 1997, which governs the use in agriculture of urban sewage sludge (Borraz and d'Arcimoles 2003). Compliance with this legislation by sewage sludge producers was not enough to reassure its users, and still less the purchasers of agricultural products, who took a stand against it. The manure-spreading trade then undertook to elaborate a "Reference System for Certification of Agricultural Recycled Fertilizer Application Services" in consultation with representatives of the public authorities, the water industry, the food-processing industry, and food retailers. In a context where administrative monitoring capacities and state regulation of urban sewage sludge application were largely inadequate, this approach aimed to combat loss of trust in the public authorities by transferring trust toward a certification. But in taking on this responsibility, the private sector actors are in effect accepting the imposition of stricter performance rules than those laid down by legislation. A certified system must conform to all the regulatory provisions in force but must also meet a number of additional requirements. In so doing, standards actually contribute to the credibility of the scientific and regulatory data mobilized.

The third register in which standards operate concerns the definition of rules and the production of information among the different actors involved in an activity. Scandals and controversies in the food sector highlighted complex chains of interdependencies between a diversity of actors, often unfamiliar with one another. Food industry and retailers, in particular, realized that they were in a dependent situation in relation to their suppliers, but they refused to take on the role of the state in checking that their suppliers complied with the regulations, especially because they had only limited trust in this compliance or in the capacity of the regulations to reduce risk effectively. But when their suppliers presented them with standards or quality insurance schemes, these constituted familiar instruments. Not only do they themselves use them, but they are also convinced that these instruments are more effective, by virtue of the way they are developed (broad consultation of the different interested parties), their voluntary nature, and the threat represented by a withdrawal of certification in the case of non-compliance (notified, moreover, by a third party). Thus, the certification approach adopted for urban sewage sludge application is directly inspired by quality control strategies established by the various parties involved in the food-production

chain in order to monitor production processes. The approach consists of bringing urban sewage sludge application systems into a "quality infrastructure" (Foray 1995, 142). Conceived as a reference standard that breaks the quality of the service down into objectified characteristics, the Certification Reference System aims to make procedures for agricultural application services compatible with the quality requirements of the food-production industries. Its provisions act as guarantees that a product now viewed as an integral part of the food-production system can reach agricultural land. Because it is accompanied by a number of indicators and instruments for monitoring and analysis, and because it replicates measures that apply in the food-production chain, certification of urban sewage sludge application thus forms a solid set of criteria that are intelligible and accessible to the actors in this chain. Certification is therefore somewhat similar to a judgment device, drawing its effectiveness from two intimately connected components: "cognition and trust" (Karpik 1996, 538).

The importance of trust in regulation has been underpinned by Jordana and Levi-Faur (2004). They insist on "the dynamic process of trust-building between social and political actors" (14), not as a substitute to the role of expertise, but as a reaction to the growing number of interested parties and the complex interdependencies in which they are caught. In this context, the aim of standard-setting as a regulatory activity is the production of common and shared knowledge between a variety of actors, upon which they can base their activity and interactions. While in the past, the function of knowledge-production belonged primarily to the state, it now belies upon the interested parties. Meanwhile, a shift has occurred, from the shared belief that knowledge produced by the state was legitimate given central government's capacity to uphold the general interest, to shared understandings around rules best capable of protecting the different interests at stake. This, in turn, provides an answer to the "demands for more transparency and accountability" (15) because standards create expectations not only on the part of public authorities but also with respect to the engagements taken by the different parties. Trust in public regulation now operates indirectly, through confidence in standards proclaiming the need to enforce regulation. More importantly, standards can provide clear and stable answers as to who is responsible or is in charge in case of an accident. Given the fact that previous crises and scandals in the field of food and health underpinned the absence of any such clear identification, private actors and public authorities alike, along with NGOs, expect standards to fill in the void. Hence, standard-setting is an important feature of the regulatory state, in its capacity to develop or encourage processes of trust-building.

In the food-production industry, the ensuing familiarity of this instrument stems from the scale of standardization and certification approaches, initially around quality and more recently around safety

issues (Borraz, Besançon, and Clergeau 2006). “Through standardization and certification, quality policy aims to adapt food-production structures to fragmented markets. It is also directed towards globalization of quality products within the European market through harmonization” (Nicolas and Valceschini 1995, 31). These procedures have proved particularly useful from the point of view of the single market: by obtaining recognition of these certificates, France has been able to thwart the effects of the free movement of goods and protect small producers in certain areas. This touches on the second dimension of standardization in France—its use as an instrument of economic policy.

### Service Standards

In order to understand the use of standardization as an instrument of economic policy, we must look at the changing role of AFNOR. This organization has been subject to challenge, for two decades now, by the different standards, marks, quality seals, and other forms of certification that have proliferated in a number of sectors. AFNOR has also lost influence through the development of European standardization.

The weak requirements for gaining the CE marking (where specifications with regulatory aims seek minimal safety rather than better quality, and where award of the mark is based on the manufacturer’s own declaration rather than on a formal certification procedure), has forced the “NF” mark to differentiate itself “at the top”, by placing the emphasis on aspects that would be better described as “normative”—in other words, “voluntary” rather than “regulatory” standardization, “performance” rather than just “safety”, “third-party certified” rather than “self-declared” (since this is hard to monitor). The CE marking—which essentially covers manufactured products—has driven “NF” to differentiate itself laterally too, through the development of new fields of application for French certification, including the environment (1992), food production (1994) and the service sector (1994). (Cochoy 2000, 85)

In a context where the state has withdrawn its funding, this evolution toward service standards puts AFNOR in a position to mobilize new resources by becoming a service company for businesses that wish to develop their export activities. Nevertheless, it preserves “a base of procedures for the socio-technical characterization and appraisal of objects” and continues to offer “a space for debate” (Cochoy 2000, 86). The example of the customer service standard NF P 15-900-1, which defines guidelines for service activities in drinking water supply and wastewater treatment illustrates this change (Diallo 2002).

This standard follows on from the financial scandals around the delegation of water services during the 1980s to private firms. The water distribution companies and the licensing local authorities wanted to standardize this activity, in order to answer the criticisms they had suffered.

The standard was drawn up by a committee including representatives of consumer groups, state and local authorities, experts, water distribution and treatment firms, and AFNOR. The preparatory work for this

committee was done by a subcommittee consisting of two representatives from water companies, one AFNOR representative, one representative of a public–private partnership water management company, and two representatives of consumer groups. This subcommittee defined the framework of the standard and then presented its work to the full committee.

In entrusting the chairing of the committee to a consumer group, the water companies wished to demonstrate their goodwill. The development process itself was carried out in a consensual manner and the business representatives acceded to most of the demands made by the consumer groups, which related to improving the level of benefit to the customer.

However, this standard cannot be understood solely from the point of view of those taking part in developing it or of their capacity to reach a compromise.

First of all, this standard illustrates the change in AFNOR's role. As its membership charter explains:

Businesses today have realized that the standard represents a means of achieving competitiveness on international markets. Therefore, from now on the battle for standardization will be fought at the global level. . . . Should we be taking steps to promote the options offered by French technology? Or should we be waiting for others to impose their choices on us? If you do not defend our standards, others will impose theirs on you.

The charter also defines the new role of standards precisely: "to establish a frame of reference for their sector, in order to make—or oppose—concrete proposals during European or international negotiations." AFNOR takes the view that service activities, which represent 70% of gross national product (GNP) of industrialized countries, ought to be subject to standardization in the same way as manufactured products—and this standardization is a major economic stake for businesses that want to open up markets, protect themselves, and be competitive.

Second of all, water distribution companies have an interest in playing an integral role in this approach, partly in response to the pressures that came to bear on them from the 1980s with regard to the conditions under which public utilities were assigned to them, the problems of fixing a scale of prices or water quality issues, but mainly in order to extend their activities on an international level. Because the French water market is almost saturated and offers low rates of profitability, the major French undertakings in the sector are turning to deregulating foreign markets in order to derive new profits. The existence of an AFNOR standard—intended to rapidly become an ISO standard—represents a considerable asset in this campaign of conquest, for two reasons. First, because this standard relies largely on the experience acquired by French companies in managing water and drainage services in France, it will be much easier to conform to it when it becomes international in scope. Second, financial aid from the World Bank to the water market is often linked to compliance with the standards in force in the sector; and international invitations to

tender generally impose standards compliance. Once again, French businesses will have an advantage over their foreign competitors from the outset.

In this case, an Anglo-American proposal for a standard covering the design and construction of drinking water networks and wastewater treatment plants was under study, which would have favored equipment manufacturers to the detriment of distribution and wastewater treatment companies. This standard would have led to the exclusion of French technologies: French businesses therefore had every interest in developing a more general standard. Furthermore, this was a sector in which European standards institutes had not intervened: while the EU imposes the status quo on national standards institutes in those sectors where the European standards institutes operate, there is no comparable constraint in other sectors. Thus, standard-setting appears to function as a state policy, in that the state supports national businesses, notably in strategic sectors where these businesses occupy dominant positions.

In this example, the discrepancy between the process of developing the standard and the objectives pursued by the main protagonists—the businesses, the state, and AFNOR—may be surprising. A document that initially responded to national considerations and was developed in consultation between consumer groups, experts, and industry, has proved, in the final analysis, to be a powerful weapon in the campaign to conquer markets—an objective that was never explicitly mentioned during the process of development. In fact, the principal actors of the standard did not have clear, precise knowledge of the broader issues at stake. In other words, when the water companies engaged in the process, their objective was to reduce the risk of future contestation in France from angry customers or consumer associations. It is only during the process that they, along with public officials, understood the larger benefits they could gain from such a standard and clearly saw the opportunity unfolding before them. This helps to underscore the issue of unintentionality in standard-setting: the discovery of opportunities not planned initially, but which appear during the process and present the parties with new resources.

Standard-setting thus constitutes a public policy instrument on behalf of economic policy, defended by the state and carried through by AFNOR with the assistance of relevant businesses. Similar phenomena can be observed at the EU level. The creation of a policy domain in telecommunications was initiated by the Commission, based on growing pressure from a range of societal actors (equipment manufacturers, major business users, new service providers, potential operators of alternative infrastructures), driven by a rising level of cross-border transactions, and with the decisive contribution of ETSI in providing a common standard (GSM) (Sandholtz 1998). When GSM became the dominant world standard, this proved to be a decisive element in favor of European firms on the worldwide market. Yet, it is far from clear that promoters of EU telecommuni-

cations policy had, at the outset, a clear view of the wider economic stakes on a worldwide level; their initial objective was to create a single telecommunications market, based on a common standard, against the vested interests of the member states to protect national telecommunications monopolies.

The two French examples provide evidence of significant evolution in the instruments of state policy and in the role played by standards. This evolution is neither sudden nor violent. On the contrary, it forms an intrinsic part of a long-term trend, whether in the development of quality certification in the food-production field or in the intrusion of the market into AFNOR standard-setting. However, it is a trend that takes every opportunity to gather strength in the context of economic globalization and the European integration project. The state finds in the use of standards a good method of responding to the constraints that these two phenomena bring to bear, as well as a means of protecting national economic sectors such as small farmers or major firms in the urban services sector.

Standard-setting in the food sector also shows that there is a willingness on the part of the state to delegate the enforcement of its legislation to private sector actors, when it lacks the resources necessary for enforcement or monitoring. These examples thus indicate that the wider use of standards clearly expresses a profound change in the state's capacities for action. Delegation to private actors, whether to industry or to an organization like AFNOR, of some of the tasks previously carried out by state services is one of several markers of changes in progress. Standard-setting is a substitute, as well as an aid, for state action.

### Conclusion

Europe and France offer contrasting examples of the use of standards—and, it must be stressed, the instances given here are by no means exhaustive. Both encourage the development of standards in a context where the state (or quasi-state, in the case of the EU) no longer has adequate instruments to carry out its tasks and to respond to the problems facing it, but they differ on several points.

The European approach displays basic principles that coincide with the guiding principles of the European integration project. The standardization process is made to coincide with a political theorization, which is in return influenced by the development of standards as a model of co-regulation. There is nothing similar to this process of co-production of theory and instrument in France.

The two levels also differ in the way they share tasks between public authorities and private actors. The European standardization process is based on a distinct cleavage between the public sector defining the objectives and the private sector developing the means to achieve them. The

French process reveals an enmeshed situation, in which the authorities delegate implementation of legislation, regulation of private sector activity, and promotion of the interests of French industry to the private actors. This provides for different degrees of integration of standards in the two systems: although more politically integrated within the EU, they leave greater room for maneuver to the social actors in drawing up standards; less recognized in France, standard-setting is more integrated into administrative functions, both in developing standards and in monitoring them.

Finally, given that the EU and France are two very different polities, standards do not fit in identically within their respective evolution toward a regulatory state.

At the European level, standards are instruments of supranational governance. This is a perfect illustration of unintentionality in policy instruments because the standardization process was not conceived with this objective. Initially destined to quicken the pace toward the achievement of a single market, and as such an instrument of intergovernmental politics, standards progressively opened perspectives for a more integrated approach. This is partly because of the fact that standards build on the "the presence and influence of transnational actors—interest groups, business, knowledge-based elites—on policy processes and outcomes" (Stone Sweet and Sandholtz 1998, 10). In the eyes of the Commission, the standardization process offers the opportunity to reduce the influence of national interests on rulemaking by building on the growing influence of transnational exchanges. In order to do this, they must rely on the standards institutes, who have perceived the benefits of such a transformation as a way to gain more autonomy. "As supranational organizations and rules emerge and solidify, they constitute transnational society by establishing bases for interaction and access points for influencing policy. As transnational society endures and expands, the organizations and rules that structure behaviors become more deeply rooted as 'givens,' taken for granted as defining political life" (Stone Sweet and Sandholtz 1998, 11). Hence, standards clearly reveal and simultaneously play an active part in the formation of a transnational society upheld by a supranational framework of governance.

In France, standards are an instrument in (and of) state transformation. Here again, they were not initially conceived as such, and it is only following a series of crises which revealed major dysfunctions within the state, along with larger economic and political changes, that administrative agents saw the use they could make of standards in regulating highly complex and interdependent domains, or in promoting French economic interests on a wider scale. Although it is not clear if, in so doing, they modified the nature of these instruments, they have certainly contributed to an unexpected extension of regulation. They have simultaneously contributed to a redefinition of boundaries between the public and private spheres, not so much in the sense that

these boundaries are now blurred, but rather in the sense that rulemaking regarding the behavior of social actors is a growing part of the latter's activity and not the sole responsibility of the state. In reality, this has always been the case: the difference lies in the fact that these rules are now openly negotiated, codified, and enforceable. Analyzing this situation as an extension or a regression of the state (or of civil society) is meaningless; rather, it seems more important to stress that standards serve as an instrument of renegotiation of the state's role and influence in a changing society.

### Notes

1. Unless otherwise specified, the term standards will from now on apply solely to *de jure* standards.
2. *Association française de normalisation* (AFNOR).
3. Preamble to the resolution adopted February 12, 1999.
4. The European Committee for Standards (CEN), the European Committee for Electrical Standards (CENELEC), and the European Telecommunications Standards Institute (ETSI).
5. European Commission, *Guide to the Implementation of Directives Based on the New Approach and the Global Approach*, Luxembourg, Official Publications Office of the European Communities, 2000, Introduction, 1.
6. Similarly, in France in the immediate postwar period, first efforts toward standardization related to the gas industry because of its dangerous nature, among other reasons (Cochoy 2000).
7. The "New Approach directives" are based on Article 95 of the EC Treaty and adopted under the codecision procedure provided for in Article 251 of the EC Treaty. It should be borne in mind that according to Article 95, the Commission's proposals on health, safety, environmental protection, and consumer protection must take a high level of protection as their basis. Thus, a safeguard clause is also provided for.
8. Commission Report of September 26, 2001.
9. COM(98)0291 -C4-0442/98), adopted February 12, 1999.
10. The differences between the three standards institutes relate largely to the nature of the areas they cover. ETSI works especially on intellectual property rights and related technologies, CENELEC relies heavily on existing or pending international standards, while CEN is concerned with new fields like ergonomics, food irradiation, and environmental management, which are more time consuming because of the need to innovate (Egan 2001).
11. Commission Report of September 26, 2001.
12. Commission Communication of May 7, 2003.
13. New products were used in this way in the directive on electronic signatures (1999/93/EC), which authorizes the Commission to adopt technical specifications drawn up by CEN and ETSI.
14. Commission Report of September 26, 2001.
15. In 2003, according to the Commission, trade in products from just the main sectors regulated by "New Approach" directives exceeded €1,500,000,000,000 a year.
16. Commission Report of September 26, 2001.
17. White Paper on European Governance of July 25, 2001.
18. Commission Report of September 26, 2001.
19. The conditions under which standard-setting activities—entrusted to the AFNOR—must be carried on are laid down in Decree No. 84-74 of January 26, 1994. In certain circumstances, the application of a standard may be

made compulsory by the authorities—thus giving the standard regulatory status.

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