Energy Efficiency Standards: The Struggle for Legitimacy

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ABSTRACT

The decrease in the regulative power of states has generated a governance gap that has been filled by, among others, international standard-setting bodies. In these bodies, private technical experts shape the rules that govern commonly used technologies as well as influence various societal outcomes. The legitimacy of such regulatory outsourcing is largely based on a variety of quasi-democratic mechanisms and principles, which these bodies have endeavored to make central to the standard-setting processes. This paper examines these legitimacy-seeking aspirations by comparing the normative claims with the actual practice of developing the international technology standard for TVs by the International Electrotechnical Commission, based on interviews with stakeholders and numerous public and internal documents. The findings suggest that the process is inadequate if the goal is not just to bundle technical expertise but also to meet the standards of democratic governance. The study thus contributes to the literature on standard-setting and legitimacy beyond the nation-state.

KEYWORDS

INTRODUCTION

Globalization is associated with a decrease in states’ regulative power and a growing influence of transnational and private rule-makers. Private actors are increasingly called upon to leverage their resources to shape numerous public policies (Buhe & Mattli, 2011), including health and safety, carbon emissions, and biofuels. They do this by developing and promoting explicit norms – such as international standards written by International Standard-Setting Bodies (ISSBs) – that regulate ‘governance gaps’ (Nolan & van Heerden, 2016) left unregulated by governments. Indeed, despite being nominally voluntary, international standards are often transformed into requirements that penetrate public law as well as produce strong distributional effects among stakeholders. Moreover, the World Trade Organization (WTO) is exercising a high level of deference towards such standards, expecting their use as benchmarks for various domestic technical regulations (Delimatsis, 2014).

Such regulatory outsourcing is subject to legitimacy requirements similar to those to which public regulators are subjected (Zürn, 2004); scholars have expressed concerns, though, that ISSBs’ procedures are driven by technocratic decision-making instead (Cafaggi, 2011) and that their standard-setting practices are in tension with core principles of democracy, causing a legitimacy deficiency in global governance (for a recent extensive study, see Eliantonio & Cauffman, 2020). Against this backdrop, numerous guidelines have been established to create procedural safeguards for private rule-making legitimacy and for “good standardization.” Two key examples are the WTO Code of Good Practice (COGP) and the guideline for recommended practices for standardization ISO/IEC Guide 59:2019. However, it has only rarely been examined to what extent and how such guidelines are implemented in practice (see, for example, Kanevskaia, 2020).

This paper focuses on energy efficiency labeling for Televisions, which is a paradigmatic case, where a privately developed international standard plays a central role in the functionality of government regulations to reduce our energy bill and environmental footprint as well as create market incentives for manufactures to design more energy-efficient appliances (Sanchez et al., 2008). In such regulatory schemes, examining the legitimacy of the embedded international standard is warranted. At stake are not just procedural aspects of governance but also the effectiveness of such an instrument to resolve the intended regulatory challenge. As the guidelines referred to above aim to address, inter alia, such concerns, this paper asks how legitimate the process of setting the international standard for TVs is with respect to the principles of good standardization?

To answer this question, the process of developing the IEC 62087 will be analyzed against the procedural and substantive requirements of good standardization articulated in the COGP and the ISO/IEC Guide 59. The guidelines are considered rooted in the normative principles of democratic legitimacy – input, throughput and output – and collectively comprise an overarching framework that international standard-setting should adhere to in order to achieve legitimacy.
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