



Online Consultations – White Paper Modernising ICT Standardisation in the EU – The Way Forward

(a) Do you agree that the attributes for standards to be associated with EU legislation and policies should be integrated in the future ICT standardisation policy as set out in section 2.1 of the White Paper?

Yes

We agree with the list of attributes as one aspect of the Commission's proposed work programme to further facilitate and formalize the referencing of fora and consortia deliverables. The list of attributes reflects years of debate and careful thinking and is well adapted for the stated purpose. The attributes cannot exist in isolation but will have to tie in with the broader framework for the referencing of fora and consortia deliverables. This will also have to include a carefully tailored process to assess the compliance of particular deliverables with the attributes. The process will need to be set up to include a meaningful evaluation of the context in which reference to a standard is proposed, in particular to assess gaps in European standardisation against the backdrop of a public sector need as well as technological and market place developments and the relevance of a particular deliverable. The procedures need to tie in with an effective application of the principles and safe-guards for referencing of standards in public procurement, including the requirements of neutrality, non-discrimination, and openness to functionally equivalent solutions. See also below the response to question (b).

(b) Do you agree that the public procurement provisions of CD 87/95 should be updated so that public authorities can more easily acquire ICT services, applications and products that fulfill their specific requirements and in particular an adequate level of interoperability?

Yes

We agree that the language of Council Decision 87/95 would need to be updated and amended to achieve the general objective of the Whitepaper.

The revised Council Decision would have to be consistent with EU cross-sector standardisation policy and ensure the effective application of public procurement law and policy. The Council Decision's public procurement provisions should explicitly be subject to Public Procurement Directives 2004/17 and 2004/18. Referencing a particular deliverable in a public tender should be possible whenever it is the optimal expression of technical specifications. Respectively, a tender should not reference a standard when

describing technical specifications at a more generic level is possible and there are different technologies, individually standardised or not, that can meet these specifications. A tender's reference to a technology standard must always be followed by the terms "or equivalent".

(c) Do you agree with the need to clarify that when they are defined within the context of ICT strategies, architectures and interoperability frameworks, the implementation of standardised interfaces can be made a requirement in public procurement procedures, provided the principles of openness, fairness, objectivity and non-discrimination and the public procurement directives are applied?

Yes and No

We agree that any requirement in public procurement to implement standardised interfaces, including in the context of ICT strategies, architectures and interoperability frameworks, need to satisfy the requirements of openness, fairness, objectivity and non-discrimination, as well as all other aspects of public procurement law and policy. Requirements to implement standardised interfaces in those contexts inherently carry a risk of running counter the principles of openness and non-discrimination. Consequently, there is an increased need to apply public procurement rules effectively to avoid inadvertent discrimination and exclusion.

Because we agree with the objectives to

- provide public administrations with the flexibility required to select the most appropriate solutions to their needs;
- guarantee application of the principles of openness, fairness, objectivity and non-discrimination and the Public Procurement Directives;

we support a clarification in the revised ICT standardisation framework that mandatory standardised interfaces are permissible on condition that it is clearly established that they serve the administrations' actual requirements, maintain maximum flexibility and do not lead to discrimination among technology solutions and suppliers.

As described in response to question (b), reference to a technology standard in a public tender should be subject to public procurement principles and rules, including the requirement to consider solutions that are functionally equivalent.

We also note the term "standardised interface" is in the context of the Whitepaper undefined and potentially misleading. Standards that pursue interoperability objectives all deal with interfaces, but there is no distinct "standardised interface" category. All technology standards should continue being subject to the same public procurement principles and rules.

(d) Do you agree that standardisation and research stakeholders, in particular ETPs, should be regularly consulted to ensure that relevant European research initiatives contribute most effectively to ICT standardisation activities?

Yes

(e) Do you agree that standardisers should adapt their procedures where necessary to ensure that contributions from research organisations, consortia and projects facilitate the timely production of ICT standards?

Yes and No

We observe research organisations, consortia and projects already often contribute to standardisation. While an adaptation of SDO procedures may be warranted in certain cases, it should be left to the SDOs themselves to determine their procedures.

(f) Do you agree that Member States should similarly consider regular consultation of standardisation and research stakeholders to ensure that relevant national research initiatives contribute most effectively to ICT standardisation activities?

Yes and No

We agree with the benefits of regular consultation with stakeholders in standardisation and research also at Member State level.

While additional synergies between national research initiatives and ICT standardisation may be beneficial in certain cases, standardisation will need to continue to be voluntary and market-led.

(g) Do you agree that ICT standards developing organisations should, subject to competition law and respecting the owner's IPR: implement clear, transparent and balanced IPR policies which do not discriminate and allow competition among different business models, ensure the effectiveness of procedures for IPR disclosures, and consider a declaration of the most restrictive licensing terms, possibly including the (maximum) royalty rates before adoption of a standard as a potential route to providing more predictability and transparency?

Yes and No

We agree that ICT standards developing organisations should, subject to competition law and respecting the owner's IPR, implement clear, transparent and balanced IPR policies which do not discriminate and allow competition among different business models, and which seek to ensure the effectiveness of

procedures for IPR disclosures.

Of course, some SDOs may - among the many possible alternatives - want to “consider a declaration of the most restrictive licensing terms, possibly including the (maximum) royalty rates before adoption of a standard as a potential route to providing more predictability and transparency”. The Commission’s decision about any further steps in this area should recognise and clarify that SDOs are self-governing and must choose the IPR policy that suits their specific situation, and that one size does not fit all.

We do have concerns that the White Paper text may give the wrong impression that ex-ante declaration of licensing terms always results in positive effects. . Most of the ICT industry supports the voluntary disclosure of actual licensing terms – which goes beyond the making of a FRAND licensing commitment – as being acceptable. But many companies oppose any such practice becoming mandatory, or the group discussion of any disclosed terms at the standards body. Implementers generally want a customized license that covers their product. Virtually no one is interested in the licensing terms for just the essential claims held by the patent holder. Many standards bodies believe that the injection of commercial licensing issues into the technical standards-setting process would be very disruptive, and group discussions of licensing terms will usually require specialised legal counsel involvement as it may at times carry the risk of competition law violation (such as concerted buyer conduct). We also note that because of ecosystem considerations, patent “hold-up” rarely occurs – there have been only a handful of complaints/litigation vis-a-vis tens of thousands of ICT standards over the past 10+ years.

We also question the validity of the concept of ‘software standards’ as a special category for further debate. Almost all ICT standards can be implemented in software, hardware or a combination thereof. The standard itself should not be confused with its implementation; i.e. software is one way of implementing standards, not the subject of specific standardization per se. Also, the market place proves that OSS software can implement FRAND-based standards since many FRAND-based standards are implemented in software based on a range of business models, including a variety of OSS licensing models; and that business model neutrality can best be achieved through a neutral and flexible approach.

In terms of general comments, it was our impression that a high number of representative stakeholders in the ICT sector endorsed the FRAND licensing framework as the most workable of available solutions for the broad range of ICT standards during the debate leading up to the White Paper that.

We also question the validity of the concept of ‘software standards’ as a special category for further debate. We disagree with the White Paper’s assumptions there is an identifiable subset of standards relating to software that requires special rules in order to enable open source implementations. As noted above, almost all ICT standards can be implemented in software, hardware or combinations thereof.

(h) Do you agree with enabling the referencing of specific fora and consortia standards in relevant EU legislation and policies subject to a positive evaluation of the standard and the forum or consortium processes with regard to the attributes list as described in chapter 2.1 of the White Paper?

Yes and No

Referencing of deliverables from fora and consortia is not an objective per se, but should be possible where there is a need, a gap, and on balance a benefit.

The effective and objective application of the attributes of eligibility to individual policy and public procurement needs and to individual deliverables in question will be key to avoid a blanket rubberstamping of specifications, stereotyping of situations or blanket clearance of particular fora or consortia. The relevance and neutrality attributes in particular should be assessed looking at the individual deliverable, the public sector need at hand, and the effect of the referencing on the market place.

(i) Do you agree that better cooperation should be promoted between fora and consortia and ESOs on the basis of a process which would lead to standards issued by the ESOs?

Yes

As noted above, cooperation between fora and consortia on the one hand and ESOs on the other hand is a good model and should be pursued especially for standards to be referenced in legislation / regulation.

We point out that we are not convinced that consortia and fora should be awarded standard development mandates and funding from the Commission. We observe that ESOs as part of a mandate are due to evaluate and take into consideration available standards, whether formal or informal. We are concerned that awarding consortia and fora with Commission mandates could conflict with the purely voluntary and market-led nature of their work.

(j) Do you agree with the establishment of a permanent, multi-stakeholder, ICT standardisation policy platform (with a wider membership than the Member State SOGITS Committee previously established by Council Decision 87/95) to advise the Commission on all matters related to the European ICT standardisation policy and its effective implementation?

Yes.

To adequately fulfil its advisory role to the Commission, the platform's membership should focus on ICT standardisation experts with experience in and

knowledge of standardisation market realities. The platform would fail to accomplish its mission if ending up in an advocacy forum for stakeholder representatives. The added value of the platform will reside in deep and first-hand knowledge of technological advances, market dynamics and standards engagement strategies, which must be reflected in its membership composition.

(k) Do you agree that the ESOs and other ICT standard developing organisations should be invited to review the function and composition of the current ICTSB to make it more efficient?

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General Remarks: Are there any other comments you would like to add concerning the White Paper or review of ICT standardisation policy?

The White Paper is an important step towards the use of the most relevant deliverables in policy and public procurement where there is an established need to reference a specification. The Whitepaper recognises and underlines the voluntary, market-led and often global nature of standardisation.

While pursuing its important objectives, ICT standardisation policy must remain part of and inform the EU horizontal standardisation policy; and needs to effectively apply the European public procurement rules. The revised Council Decision will have to reflect the increased need for meaningful and effective safeguards to ensure openness, technological neutrality and non-discrimination in public procurement.

The implementation of the White Paper should also be informed by the international trade context and remove, and not create, barriers to trade. Its impact on global trade and its inspiration to other regions of the world should be carefully assessed and taken into account.