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Brussels, 17 August 2007

*Re: Public Hearing on proposed mandatory ICT Standards for Public Sector Applications*

Dear Mr Parr,

I am writing to you on behalf of the "Initiative for Software Choice" (ISC) regarding the use of open standards for software applications within public authorities. In particular we wish to comment on the Standardisation Council's proposals of 11 May 2007 to make certain ICT standards mandatory for public software infrastructures.

ISC is a global coalition of more than 300 information and communication technology firms and 12 ICT associations around the globe, offering a wide range of software services. Its purpose is to promote open and competitive markets without market discrimination.

The global ICT market is highly dynamic and new technologies and inventions are constantly changing the conditions and standards for hardware as well as for software. The ICT industry has often experienced that public standards and detailed restrictions imposed on the market have been outdated by new inventions. Therefore, ISC urges the Norwegian Government to be cautious when taking a definite decision on which software standards are to be used in document formatting so as not to preclude the use of future innovations in this area or to limit choice among standards that can co-exist and be interoperable and yet are responsive to different user needs.

In the recent report by Gartner on the envisaged revision of the European Interoperability Framework (see: <http://www.epractice.eu/document/3698>), it is recommended that:

- p. 47: *"EIF v2.0 should support multiple standards in order to facilitate evolution and avoid vendor lock-in", and "EIF v2.0 allows open standards and other recognized standards to coexist";*
- p. 50: *"EIF v2.0 will facilitate evolution and avoid vendor lock-in by supporting multiple standards as a Design principle";*
- p. 53: *"The (EIF v2.0) guidelines should stress the need to accommodate multiple standards per layer at any moment in time, to facilitate evolution and avoid vendor lock-in".*

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Gartner acknowledges in its report the importance of open standards and other recognized standards to coexist. Gartner states that ICT vendors and system integrators should recognize that open standards can be helpful and that the era where proprietary standards lead to a sure base of loyal customers is fading away. ICT is becoming just like any other industry where true added value and competitive pricing determine the winners.

The Gartner report picks up on the controversial new definition of an 'open standard' first proposed in EIF v1.0 and not endorsed by the European Commission. Despite the attention this proposed definition has attracted in the public debate, Gartner recommends not to focus on the use of open standards per se. Whether open or not, standards are one way to further the deployment of public services. Thus, EIF v2.0 should facilitate the most profitable business model(s) of total cost of ownership versus public value, under proper recognition of intellectual property rights, if any. The support for multiple standards allows a migration towards open standards when appropriate in the long run.

The use of 'open source' software may further the deployment of public services. (Open source software and open standards are not the same thing.) However again, whether open source or not, it is the most viable software that best addresses the Government's needs, takes into account the total cost of ownership (including support services), and thus should be allowed to survive in the infrastructure. So again, EIF v2.0 should facilitate multiple options to co-exist, and to compete.<sup>1</sup>

In line with these recommendations for multiple standards under the envisaged EIF v.2.0 we strongly support competition between multiple standards to bring forward innovation and to ensure consumers the best choice of software. This is especially true with regard to file formats in a highly dynamic market with today some 40 different file formats available. To that end, the hearing documents fail to discuss any potential benefit to consumers and users with the OOXML standard, as it seems narrowly focused on promoting the ODF and PDF file format standards. The ODF standard in particular is far from being main stream because it is seen as not mature enough. By way of contrast, OOXML already is being widely implemented by several companies, including certain open source software providers.

The overall concern for the global ICT industry is to ensure that lawmakers adopt flexible policies and set targets rather than to decide on fixed rules and different standards which pull the global ICT market apart rather than getting markets to work together, boost innovation and provide choices to address different user needs.

On a separate point, the ISC strongly rejects the definition of "open standard" presented in the hearing documents. In particular, we have concerns regarding the element that "[t]he intellectual property rights related to the standard (i.e. patents) is made irrevocable available, without royalty."

<sup>1</sup> see the above quoted references under the Gartner report, pp. 47-53 and following

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This definition is not aligned with the internationally recognised definition that has been developed by the "Global Standards Collaboration" (GSC)<sup>2</sup> and is widely endorsed, including by ETSI and the ITU-T.

The GSC definition provides the following criteria for an open standard:

- Approved and/or maintained by collaborative processes.
- Such consensus-based processes understood to be fully accessible and transparent.
- Interested parties should not be excluded from these processes by any means.
- These standards should be subject to RAND/FRAND IPR policies not to mandate, but to permit, at the option of the IPR holder, licensing essential IP without compensation, and
- These standards should be published and made available to the general public under reasonable terms (incl. for a reasonable fee or for free).

While many of these criteria overlap with the criteria listed in the hearing document, there is a fundamental difference with regard to the relevant IPR policies. The GSC definition of open standards refers to the standards bodies' IPR policies that request patent holders to commit to licensing necessary patents on FRAND/RAND terms (with or without charges of royalties) as applied by international, European, and national standards organisations such as ITU-T, ISO IEC, ETSI and ANSI. More restrictive requirements such as those put forward in EIF v.1.0 and in the hearing document are not aligned with the current IPR policies of some of the most widely-respected standards bodies and would preclude use of many of their widely-adopted standards that are recognized around the world. Such restrictive criteria also could have an adverse impact on incentives to innovate in the technical areas undergoing standardization.

This is recognised also by the very recent ICT standardisation study commissioned by DG Enterprise (available at <http://www.ictstandardisation.eu/>) that refers for this purpose to the GSC definition of open standards (see the Executive Summary, Recommendation 1). A more limited definition of "open standards", even for the purpose of ICT procurement alone, will always be understood more generally and could cause disruption not just in the ICT sector but for standardisation at large. In addition, it would unduly limit the Government's ability to choose the standards and ICT products that best meet its needs both technically and in terms of overall costs.

In conclusion, ISC urges the Standardisation Council and the Norwegian Government to allow consumers and users to decide which standards are the best according to their

<sup>2</sup> Participants at GSC-10 included the Australian Communications Industry Forum (ACIF), Association of Radio Industries and Businesses (ARIB) of Japan, the European Telecommunications Standards Institute (ETSI), the Alliance for Telecommunications Industry Solutions (ATIS) and Telecommunications Industry Association (TIA) from the US, the China Communications Standards Association (CCSA), the Telecommunication Technology Committee (TTC) of Japan, the Telecommunications Technology Association (TTA) of Korea, the ICT Standards Advisory Council of Canada (ISACC), and the International Telecommunication Union (ITU). - Guests and observers included representatives from the American National Standards Institute (ANSI), the Asia Pacific Telecommunity (APT), the Open Mobile Alliance (OMA) and the Sector Board 4 of International Electrotechnical Commission (IEC). This "open standards" resolution was reaffirmed at the GSC-11 and GSC-12 meetings in 2006 and 2007, respectively.

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variety of needs and expectations, as opposed to being limited to a standard set by administrators. We fear that the choice of just one standard bears the risk of being outdated before it is even implemented. Consequently it will not benefit users, as well as being prohibitively costly to public budgets and taxpayers to adopt just one standard.

Referring to the decision taken last month in Denmark to adopt two standards i.e. Open Document Format and Open Office XML, for at least a trial period of one year, we strongly advise Norway to follow this multiple standards track. Multiple co-existing standards, as opposed to the selection of only one standard, should be favoured in the interest of users. We believe that the markets are the most efficient in creating standards, and that the marketplace also is the best place to test these standards' effectiveness by measuring how widely they are adopted.

Similar to this multiple standards decision by the Danish Government, the new e-Government standards in Switzerland (SAGA.ch 4.0), approved on 22 June 2007, recommend both ODF 1.0 as well as the ECMA 376 Office Open XML formats, thus reconfirming the application of multiple standards for document data retention.

We trust that Norway, following the Danish and Swiss examples, just to mention these most recent cases of multiple standards applications in Europe, will refrain from any kind of mandatory regulation and discriminatory interventions in the market.

We sincerely hope that the Norwegian Government will take the ISC recommendation on multiple standards developed by the market into consideration and ISC will be happy to provide more information and answer any questions you might have.

Sincerely,



Hugo LUEDERS  
Director – ISC Europe