

Neelie Kroes

European Commission Vice-President for the Digital Agenda

How to get more interoperability in Europe

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

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Ladies and gentlemen,

Exactly two years ago I spoke about interoperability and standards here in Brussels. I am sure some of you were present at the time – or at least read my remarks. For the others, here is a brief overview:

1. Interoperability boosts competition and we need more of that.
2. For devices or applications to be interoperable - to work together - all concerned parties must agree to a common way of "doing things".
3. Formal standards are one way to get there.
4. More transparency in formal standard-setting can lead to more efficient outcomes.
5. Public and private procurers of technology should be smart and build their systems as much as possible on standards that everybody can use and implement without constraints: this is good for the bottom-line because it promotes competition between suppliers and prevents vendor lock-in.

In other words, as I said on that occasion: choosing open standards is a very smart business decision.

That speech brought a general perspective to my work on competition policy. Today I must apply that thinking in a more direct way, as the person who has proposed the Digital Agenda for Europe. Even though the whole Commission is responsible for its implementation I expect interested parties to mostly turn to me to demand progress – and rightly so.

Therefore let me explain what I have in mind when it comes to the topics of interoperability and standards.

It is not my intention to raise eyebrows today, but I do not apologise if that is the reaction. At my age, one doesn't hold back!

I will start with a confession: I am still a big fan of open standards. I believe in openness, and I believe in practising what one preaches.

Some observers think "open standards" is a tainted term that should not to be used in the absence of a generally recognised definition. Others act as if a policy document that does not mention "open standards" would automatically lack merit. My position is in between: I don't believe that listing keywords can substitute for policy. Whatever the labels, what matters is the substance. I would urge all stakeholders to focus on the content of the package rather than the wrapping.

In developing the substantive policy for European standard-setting, it is important to start with a basic question. What *is* a standard? What does a standard look like?

Almost always a standard will be embodied in a specification; a document that describes and defines the characteristics a device or process or object must have to be an implementation of a given standard. In the case of a formal standard the specification is drawn up by a standard-setting organisation pursuant to a well-defined process. For example, the process should be open and transparent and allow for participation of all interested stakeholders, not the least to ensure buy-in and market acceptance for the resulting standards.

But a standard will be of only limited use for interoperability until many vendors use it as a building block for their products.

Let's imagine two competing standards that are both technically excellent for a certain task but differ in the level of constraints for implementers. Which of these two standards do you think will see more implementation and use, including for unforeseen purposes? The one that you can download from a website and that you can implement without restrictions? Or the other one which you have to buy, which is restricted to certain fields of use and which requires royalty payments for embodied intellectual property rights (IPR)?

The answer is obvious. And that is why everybody who cares about interoperability should care about the financial conditions for the use of standards as well as the indirect constraints imposed on third parties: the fewer constraints the better.

In reality, there are different degrees of openness between the two extremes that I have sketched out. Likewise, there is a diversity of technical specifications related to interoperability. These range from those embodying formal standards, through to free public specifications, and up to proprietary information.

To cover all those aspects I have proposed five key actions in the Digital Agenda for Europe to

- have more and better standards recognised and created in Europe;
- to make better use of these standards; and
- to improve interoperability in the absence of standards.

So, how to recognise and create more and better standards in Europe?

First, we badly need to reform how ICT standards are dealt with in Europe. Both internal Commission reflection and a wide public consultation have shown that the European standardisation framework is out of sync with fast-moving technology markets. In this context, I am cooperating closely with my colleague Vice-President Tajani. By the end of the year, the Commission will make the necessary proposals for the reform of the European standardisation system. In particular, some key reforms will be of special relevance to the ICT sector.

The standards that power the digital world are made by the economic actors. In Europe only ETSI allows these actors to directly participate in the making of standards. One negative result is that the standards underpinning the emerging universal communication platform: the internet and the world wide web - including standards for content formats - are made elsewhere.

This puts these standards, many of which are truly open - that is to say they do not come with any constraints for implementers - at a disadvantage vis-à-vis European standards when in legislation or public procurement. Just one example: I think we would have been spared some unnecessary fights over the use of document file formats by public bodies in the last few years if there had been a European document format standard already available.

The reform of the European ICT standardisation framework is a simple way to bring relevant standards from non-traditional standard-setting organisations to an equal footing with European standards when it comes to achieving interoperability. I am thinking here of bodies like the World Wide Web Consortium, OASIS or similar fora and consortia. This could be done via a fast-track approval of their standards through a process hosted by a traditional European standards body such as ETSI, or through the assessment of these bodies' compliance with certain criteria regarding notably openness, consensus, balance and transparency.

Second, we must use all opportunities to promote appropriate rules for ex-ante disclosures of essential IPR and licensing conditions in standard-setting contexts.

I have nothing against intellectual property being brought to the standard-setting table, but it must be disclosed. Any economist will tell you that you can only make a rational decision between different options if you can compare their benefits and their costs. And, let's face it, establishing FRAND (Fair, Reasonable and Non-Discriminatory) prices is a hard task over which reasonable people often disagree. Transparency is therefore in everyone's interest - the alternatives are not. Why risk the litigation? Why set a standard in ignorance of the costs of implementation?

In some cases, the choice of a technology in a standard might be obvious in the absence of technical alternatives. Costs and licensing conditions are less relevant in such cases. But in most cases there are competing options and it makes clear sense to also consider this information.

The Commission has already taken an important step by drafting new guidelines on the application of the Treaty's antitrust rules to horizontal agreements to promote an efficient and competitive standard-setting process that is protected against misuse. The draft, which is currently available for public comment, relies on the well-established concepts of non-discrimination, transparency and availability and specifies minimum requirements that distinguish standard-setting from a cartel.

But I want to do more.

Some standard-setting bodies already have ex-ante disclosure rules, so why not all of them? This is a matter of efficiency in my opinion. And surely, as a matter of effectiveness, when the Commission mandates standards bodies to draw up a standard it should have the right to be *more* demanding on the standardisation process, to ensure that standards are *less* demanding when it comes to their adoption. We could also think about enticing other standards bodies to adopt such rules, for example by giving their outputs preferential treatment when approving them as European standards. Finally, why not tie the public financing of standards bodies to the existence of good ex-ante rules?

Let me wrap up this point by making one thing absolutely clear: we want to make standard-setting more efficient, not more burdensome. We *don't* want uniform rules everywhere: we want smart rules that are adapted to their respective fields. Standard-setting for software interoperability is not the same as setting a new standard for, say, digital television or mobile telephony. We should have the right rules in the right contexts. The standardisation reform I discussed earlier and the on-going consultation on the draft guidelines for horizontal cooperation agreements will initiate a further discussion on ex-ante disclosure in standard-setting organisations. I am convinced that a more visible role for fora and consortia standardisation in Europe will already lead to many improvements here.

OK, now we have taken care of the standards: they should be available. But what can we do to ensure they are used in a smart way?

Third, we want to help ICT procurers to avoid missed opportunities. Together with Commissioner Barnier and Vice-President Tajani we will draw up detailed guidance on how to analyse a technology buyer's requirements in order to make best use of ICT standards in tender specifications. This is a complex exercise where the market situation, current requirements and future developments have to be weighed carefully. I am sure many of you could testify from your own experience that the skills of public authorities vary greatly when it comes to this aspect of procurement. Many authorities have found themselves unintentionally locked into proprietary technology for decades.

After a certain point that original choice becomes so ingrained that alternatives risk being systematically ignored, no matter what the potential benefits. This is a waste of public money that most public bodies can no longer afford.

It is even worse when such decisions result in the waste of private money on top. That happens where the public authorities' decisions force citizens to buy specific products (rather than any product compliant with an applicable standard) in order to make use of a public service. This could be your kid's school insisting on the use of a specific word processing system or your tax department's online forms requiring a specific web browser.

If you have other concrete examples you can share don't hesitate to send them to me. I want to make sure this guidance will be as practical as possible.

Fourth, Commission Vice-president Šefčovič and I want to put in place a new European Interoperability Framework. To be sure, the existing version of the EIF is not bad. It even sets out a list of characteristics of "open standards" within the context of cross-border eGovernment services. However, our work with Member States through the ISA programme and its predecessors has made clear that there is an opportunity to further enhance interoperability between public administrations.

This second version of the EIF is foreseen to be adopted at the level of the College of Commissioners, and will therefore rightly be perceived as of a higher status and importance than EIF version 1. Both the Framework and an Interoperability Strategy paper are foreseen for 2010.

"But what will the new EIF say?" you will ask. Well, the drafting process has not been easy. But I am convinced that its content provides a pragmatic and operational set of principles that will help us all to move ahead.

For me, it is a fundamental tenet that public administrations spending tax-payers' money should opt for the least constraining solution that meets the requirements for a given need. Such a rule, as the default, would shield public authorities from the dangers of long-term lock-in. It would also ensure competition between suppliers for follow-up contracts and for services. Opting for closed solutions would be possible, but on the basis of a clear justification, rather than because it was the easy option. Several Member States have comparable policies in place, some of which have actually been inspired by the old EIF. For example, the "comply or explain" policy in The Netherlands. In my view the Commission has a unique opportunity with the adoption of the EIF version 2 to reaffirm its lead in this area.

But what do we do when there is no standard? When there simply is a product everybody has to use in one way or another but there is no specification describing the "de facto" standards it implements?

Fifth, with my colleagues in the College I will seriously explore all options to ensure that significant market players cannot just choose to deny interoperability with their product. You no doubt remember that I have some experience with reticent high-tech companies: I had to fight hard and for several years until Microsoft began to license missing interoperability information. Complex anti-trust investigations followed by court proceedings are perhaps not the only way to increase interoperability. The Commission should not need to run an epic antitrust case every time software lacks interoperability. Wouldn't it be nice to solve all such problems in one go?

Therefore I am looking for a way to ensure companies offer the required information for licensing. We are thinking very hard about how this could be achieved. Any such initiative would probably be limited to certain types of IT products. And it would likely involve some form of pricing constraints.

Whereas in ex-post investigations we have all sorts of case-specific evidence and economic analysis on which to base our decisions, we are forced to look at more general data and arguments when assessing the impact of ex-ante legislation. Just to be clear, while it is still early days, it is certainly possible that I will go for a legislative proposal. This could have a profound impact on the industry concerned so it is not a decision taken lightly. Many of you work for companies that could be concerned by such a measure. I invite you all to let me have your views.

These are the five framework measures we are looking at in order to increase the benefits we can reap from interoperability. Of course interoperability and standards are important concepts across almost all parts of the Digital Agenda. For example, we want to achieve interoperability for cross-border eHealth applications and for smart energy meters. The benefits of these actions will not only be economic, they will also fundamentally shape our future quality of life.

"Will she really be able to pull off all that?" you may wonder. I also wonder, sometimes. But at the end of the day this is a matter of leadership. We can't change all of this in one year, and there will be plenty who try to stop change. But I still want that change, and I will keep coming back and speaking to you until we achieve it.