

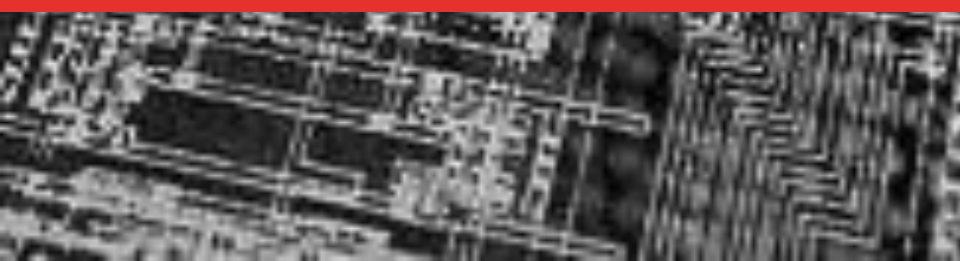


# Practising open procurement of IT

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10 June 2010

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# Open government and public procurement

- True open government means that:
  - Citizens should be able to communicate seamlessly with public administrations by using applications and services that interoperate and that do not lock them in to single-vendor technologies
  - Citizens should not be required to purchase specific software in order to access government information or favour one operating system over another
- These principles should be applied in public procurement

# Legislative framework for public procurement in the ICT field in the EU

- Directive 2004/18/EC (the “Public Procurement Directive”)
- Council Decision 87/95/EEC (the “ICT Standards Council Decision”)
  - Currently under revision
  - White Paper on “Modernising ICT Standardisation in the EU – The Way Forward”

# The EU Public Procurement rules

- A tender notice to be published in the OJEU should comply with the following rules:
  - Make reference to standards developed in formal national, European or international SSOs, or common technical specifications officially published in the OJEU; or
  - Describe the relevant functional or performance requirements

# The principles provided by EU Public Procurement rules

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- must treat vendors equally and non-discriminatorily

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- must act transparently
- must not draw up technical specifications in such a way as to exclude products that meet their requirements
- must not refer to a specific make, source or process



# EU or international standards should be used for IT procurement

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  - Need for technical compatibility (operational continuity in existing systems)
  - Genuinely innovative nature of the product to be procured
  - The standard in question is technically inadequate for its purposes

# When is a standard technically inadequate for its purposes?

- It does not provide the appropriate means of achieving information and data exchange or interoperability
- There are no means to establish that a product conforms to the standard
- It is a European pre-standard, and therefore lacks the necessary stability
- After careful consultation of the market, there are important reasons of cost-effectiveness that the use of a specific standard is inappropriate

# Do all tenders comply with the EU rules?

- Numerous instances where the exceptional basis on which reference to named products/systems is used is questionable (see OFE study 2008/FLOSSPOLs project 2005):
  - calls for tender for specific, named companies and products, while using the "open" tendering procedures
  - calls for tender for named products, as above, using "negotiated" procedures with the sole justification for these procedures being that the named company "owns the Intellectual Property Rights" for the required software
  - calls for tender that do not require software from specific companies, but require compatibility with previously purchased proprietary systems (with proprietary software or proprietary standards)

# Ten suggestions to governments for ICT standards-based procurement policies

# Limit use of brands

Compatibility with existing systems not to be  
an excuse for continuing to acquire  
products from a single vendor



Government authorities should adopt policies establishing clear preference for open standards (e.g., draft EIF v2.0 (July 2008))

Define openness and define it well (*e.g.*,  
Japanese Interoperability Framework)

# Reform standards-setting to avoid instances like ISO/OOXML

Change legislation to put standards adopted by formal SSOs and those adopted by appropriate fora and consortia on equal footing

Enforce competition law against monopolists  
who fail to disclose specifications required  
to achieve interoperability with their  
products

# Adopt *ex-ante* disclosure and negotiation policies

# Change patent laws to prevent patents from being used to hinder interoperability

Europe should lead in fostering open standards based IT procurement across the world



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BRUSSE-1-270027-v2