

**OFE PRELIMINARY RESPONSE TO UK GOVERNMENT OPEN STANDARDS
CONSULTATION
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OpenForum Europe (OFE) is pleased to submit this preliminary response to the UK Government Open Standards consultation and affirms our strong support for the efforts of the UK Government to promote open standards and open source software for the Public Sector.

Through open standards and use of open source software, the UK Government is best able to promote its goal of IT reform and better investment in IT across departments and on behalf of citizens.

CHAPTER 1 CRITERIA FOR OPEN STANDARDS

Q1.1. How does this definition of open standard compare to your view of what makes a standard 'open'?

Any definition for use within a public procurement has to be both complete and testable, rather than just a declaration of policy. We support this definition which we see gives a clear base position, recognising that it does both align with the declared Government policy of seeking a level playing field, and work with the key standards setting organisations. In other words: the definition reflects the requirement for a highly important transparency process. Any open standard needs to meet two quite distinct measures of openness – firstly the openness of the development and maintenance of that standard, and secondly the openness it displays and allows for use in the market. In the context of interoperability availability from more than one supplier is a sensible criterion, and reflects the way that the market will adopt and implement emerging standards.

Q1.2. What will the Government be inhibited from doing if this definition of open standards is adopted for software interoperability, data and document formats across central government?

The context of the definition, i.e. software interoperability allows and demands the very clear need to allow full and unencumbered usage in order to meet the procurement policy requirements declared by Government.

In general, standards which fulfil these requirements are the dominant form in the software interoperability arena so there will be little or no limitation. In some minor cases, e.g. video encoding, it may suggest using standards that have less uptake than dominant forms or using the royalty free exceptions that are often available for software only implementations.

Moreover, a clear open standards policy in the area of software interoperability has proved to support innovation. In a mixed software economy, open standards will increase the market for proprietary as well as open source software products. Open standards will not shut out anything: rather, it makes interoperability more generic, easier to achieve and lowers the cost of building and testing special individual interfaces that would be required in a fragmented software environment. The internet and the world wide web are prime example of the last 10 to 15 years. There are many new areas ahead where open standards for software interoperability are critical for facilitating innovation. This is, for instance, the case in projects for technology integration like smart water supply, intelligent transportation, smarter cities, smart grid, e-mobility, etc. In all of these areas the availability of open standards for unencumbered use and implementation is critical in order to achieve interoperability and promote innovation on the level of the implementation of the respective standards. Open standards make information about how content is coded openly available and

allows for making full use of protocols, APIs, messages etc. Thus, such information can be used by any innovative service supplier offering new services on top of current existing infrastructures for providing new insights and analyses as well as new techniques for optimising processes and supply chains. Open standards are critical in this respect. Open standards will enable the commoditisation of individual components of software stacks thereby increasing choice and competition across the board. They enable the transition from particular to the generic solutions. This enables an increasingly wide ranging central core of generic components to be built around clearing the ground for the development of innovative new products.

Q1.3. For businesses attempting to break into the government IT market, would this policy make things easier or more difficult – does it help to level the playing field?

Open standards will significantly increase the ability to enter into the government IT market for two reasons: (1) Open standards can be used and implemented by any vendor or supplier without restrictions. This means that any market player is free to build his technologies and offerings around open standards and thus will be able to compete; (2) Open government infrastructures and architectures that build on implementing open standards allow for a level playing field of competition. Vendors can offer their technologies on equal ground and get into fair competition regarding the functionality of their technologies, the design, performance, etc. Open standards prevent single-vendor lock-in, therefore, technology components can more easily be replaced with new, innovative technologies – and at a comparatively low exit cost.

In particular, a significant beneficiary will be the SME. By definition it minimises the legal and financial issues in developing and maintaining standards compliance products. However it should be noted that the dominant factor in its effect on new entrants will be the handling of legacy issues and ensuring open standards are being used by default in software that supports multiple standards.

Q1.4. How would mandating open standards for use in government IT for software interoperability, data and document formats affect your organisation?

Not applicable

Q1.5. What effect would this policy have on improving value for money in the provision of government services?

This is the fundamental enabler to a more competitive IT market: moving the public sector away from costly lock-in stemming from single supplier solutions and allowing both new entrants and new competing business models. Ensuring the highest levels of competition on a key procurement now, but also ensuring it can be replaced, maintained or extended by the widest possible range of suppliers in the future. The combined effect of more freedom and higher competition improves choice, stimulates innovation and lowers total cost as in any competitive environment.

Open standards give rise to the widest possible range of software suppliers - both closed and open, large and small - as there is no barrier to suppliers adopting an open standard and they are compatible with all software licensing options. Whether any individual software development project does so will still be an independent commercial decision. If reference architectures are defined by open standards it significantly improves the ability to substitute one product for another without entire system replacement.

For Government there is a particular priority in assessing the impact on third parties, suppliers, delivery agencies, local authorities and citizens that may be affected by standards choices that govern interactions with government. Only open standards ensure there is a minimum economic impact and maximum choice for the third party - enhancing the opportunity for digital inclusion and

allowing use of open source software by the third party.

These benefits can be fairly assessed and captured in a Total Cost of Ownership assessment, but only if that assessment includes exit costs and costs to third parties as well as the traditional focus on cost of acquisition and maintenance. It also means that a net present value must be associated with future options and wider objectives.

Q1.6. Would this policy support innovation, competition and choice in delivery of government services?

IT innovation is rarely generated within the interoperability standard itself. Like the internet and the world wide web the innovation potential is built on top of the standard. The role of the standard is to maximise use and provide the enabler for those added value services and solutions. All the evidence is that in this sector (unlike other industries or currently even within telecommunications) all the benefit will be realised externally from the standard itself.

In the longer term the flexibility of well architected solutions based on open standards should allow incremental improvements and innovations to online services be delivered far easier but it should be recognised that many of the dominant factors that would exploit this are not IT related.

Moreover, the use of open standards based interfaces to government online services maximises the ability of third parties, both commercial and non-commercial, to extend services functionality or deliver services on behalf of government. Thus, innovation can be taken into account regardless from which provider it comes. Governments are free to choose and take innovative technologies on board without being bound to one single provider and being locked-in into this single vendor's innovation cycles.

It is noteworthy that many of the dominant factors cited by the UK Government that are roadblocks to its goal of reform are non IT related. Hence it is necessary to continue to focus on a wider set of policies reflected in the wider debate on the delivery of public services.

Q1.7. In what way do software copyright licences and standards patent licences interact to support or prevent interoperability?

In the context of this debate on software interoperability, it is important to recognise the variety of ways in which users of a standard could be artificially influenced by a potential patent holder. For interoperability and the needs of public sector procurement it is highly desirable that not only do they not wish to have any such obstacles but that in order to ensure a level playing field for all software licenses that they must be free of cost, available for use without restriction and non assertable. Directly you allow exceptions then the 'pack of cards' tumbles – you lose the certainty and (in particular) smaller suppliers lose their protection to innovate and to compete. Therefore, for software interoperability, a clear open standards policy is required to ensure interoperability and to allow broad implementation of standards throughout market players including open source technology providers.

Q1.8. How could adopting (Fair) Reasonable and Non Discriminatory ((F)RAND) standards deliver a level playing field for open source and proprietary software solution providers?

Only if a standard is both royalty free and non discriminatory/not assertable can it be easily used by a wide variety of vendors and suppliers, including the open source community. Implementations

that are free and open to inspection encourage wide spread compatible adoption - as is the case with W3C and its maintenance of the standards that underpin the internet. That is true for any licence made available for a standard. There is no globally recognised definition of FRAND, so each standard claimed under FRAND terms would have to be reviewed individually. But there is a clear legal analysis that identifies why the non-permissive OSS licences (i.e. GPL type) are incompatible with what is generally viewed as FRAND - unless specific RF, non-discriminatory, non-assert clauses are added. That, however, is not current practice. Therefore, a clear open standards policy should be applied with a precise definition of an open standard requiring RF, non-discriminatory and non-assert clauses for licensing, while (F)RAND as such and as commonly understood will not help.

Q1.9. Does selecting open standards which are compatible with a free or open source software licence exclude certain suppliers or products?

By definition no. Any open standard as defined in this policy has no restriction on its implementation and can be implemented by anyone, independent of their business or development model or licence. Open standards which are compatible with a free or open source software licence are the dominant model for software-interoperability standards anyway and the leading global standards development organisations have – with the full consent of their members – adopted respective IPR policies. An impact on supplier or products would only occur where some suppliers would deliberately counter-act this global trend by creating competing standards where patent licensing and compensation for licensing technologies is required – thus creating encumbered standards that compete against open standards in order to exclude open source technologies and providers. By adopting a clear open standards policy governments set clear rules that prevent such market distortion and discrimination against open source suppliers. In other words: with a clear open standards policy governments create an environment for healthy and fair competition.

Q1.10. Does a promise of non-assertion of a patent when used in open source software alleviate concerns relating to patents and royalty charging?

Although as with any such legal text it should be carefully examined, non-assertion is a perfectly usable alternative. Indeed many non-assertion examples are far wider in scope than royalty fee licensing for particular standards. Royalty free on its own will not satisfy the needs of the UK Government policy. We note that the text in the definition requires the non-assertion to be non-discriminatory but the question specifies non-assert applied to open source implementations. Non-assertion should cover all implementations of the standard.

Q1.11. Should a different rationale be applied when purchasing off-the-shelf software solutions than is applied when purchasing bespoke solutions?

The delivery model of the source code is entirely independent from whether a product supports a given standard or not. Indeed much of the current lock-in results from the inability to interoperate between COTS and wider integrated solutions. The move towards services-led solutions makes this distinction even more incongruous. There seems no reason to make this distinction beyond any necessary and well managed exception handling policy that applies to both COTS and bespoke software.

Q1.12. In terms of standards for software interoperability, data and document formats, is there a need for the Government to engage with or provide funding for specific committees/bodies?

Government is a leader not only by way of policy setting but in public procurement so it would be remiss if it did not feel it had a role to play both in the development of international standards and in their deployment. In general Government's best contribution would be outlining the requirements it sees as needing a standards based solutions or where standards are seen to be deficient. There is also a key role in providing suitable material and environments for compliance and interoperability

testing.

Q1.13. Are there any are other policy options which would meet the described outcomes more effectively?

No answer at this stage

CHAPTER 2 OPEN STANDARDS MANDATION

Q2.1. What criteria should the Government consider when deciding whether it is appropriate to mandate particular standards?

In general Governments should be careful to mandate standards. A more differentiated approach should be preferred to list standards which are recommended and only a very few which are essential for ensuring interoperability which are mandated.

For sure, such proposed standards need to meet the defined criteria. If they do not meet the criteria but are required for some purpose then there needs to be a clear process for examining alternatives, assessing their use and government dependence, as well as the process for future realignment with open standards as they emerge.

Q2.2 What effect would mandating particular open standards have on improving value for money in the provision of government services?

Simplification of software and services provision should decrease costs. It will create clarity within supplier and integrators minds, and sharpen up the development roadmaps of product suppliers. There will be reduction in integration costs available at all steps of the solution delivery, just reducing the testing of multiple permutations would be a major advance.

Q2.3 Are there any legal or procurement barriers to mandating specific open standards in the UK Government's IT?

No, in our view it has no impact on EU rules on public procurement and if anything it would decrease the legal objections to specifying proprietary technology via state aids. It follows a similar route already operational in a number of other European countries.

Q2.4 Could mandation of competing open standards for the same function deliver interoperable software and information at reduced cost?

This a broad question, as there may be 'competing' open standards that provide the same functionality. However, as a general matter, in the area of software interoperability by definition this may require replication of investment throughout the ecosystem. The goal should be to unify on the simplest standards (to minimise use of complicating extensions) and provide limited translation services - aimed at external interfaces or in gated silos.

Q2.5 Could mandation of open standards promote anti-competitive behaviour in public procurement?

No, proven open standards tend to promote competition and innovation. An open standard, as defined – in particular protection on independence, availability and lack of assertable patents works against any lock-in, and specifically encourages competition and innovation in the solutions built using the standard.

Q2.6 How would mandation of specific open standards for government IT software interoperability, data and document formats affect your organisation/business?

Not applicable

Q2.7 How should the Government best deal with the issue of change relating to legacy systems or incompatible updates to existing open standards?

A clear requirement for standards to enhance interoperability is the need to address non compliant legacy implementations. Actual process will vary depending on the exact application but this needs to be defined in each case before deployment of the mandated solutions.

Particularly with interoperability requirements any legacy issues and future exemptions must be restricted to set 'closed' or 'gated' user groups and clear boundaries given to the use of exemptions both in terms of closed user groups and in setting clear timescales to achieve compliance. Otherwise the network effect will ensure that exemptions will spread, undermining the goal of the policy.

Q2.8 What should trigger the review of an open standard that has already been mandated?

Any change that impacts either of the criteria contained in the definition. This might include non-editorial updates to the standard, or any change in the licensing conditions. Additionally internal feedback suggesting the standard was limiting in some sense to clear functional requirements. This might evolve from experience or development in the market.

Q2.9 How should the Government strike a balance between nurturing innovation and conforming to standards?

Although there is no precise formulation, standardisation is aimed at providing a level playing field on top of which competition naturally promotes innovation, often increased innovation. As previously noted, there is little innovation in the standard itself. The classic example is the use of the internet itself. It should however form part of the review process. Other examples which will gain relevance over the next decade are innovations that lie in the integration of technologies, e.g. for optimising processes and for maximising the performance of systems, but also for providing new, innovative solutions like smart grid, e-mobility, or the Cloud. In all these cases open standards help to facilitate innovation and there is no conflict between nurturing innovation and conforming to standards – on the contrary, standards promote innovation.

Q2.10 How should the Government confirm that a solution claiming conformity to a standard is interoperable in practice?

In part this will depend on where liability is held - if it is a system integrator responsibility then it will be covered by contractual obligations. If the procurement is direct it should be covered by implementation documentation review and a level of testing suitable to the risk based assessment of the product. (ie more rigorous testing in safety critical implementations).

Regarding the use of open standards, it is a general practice in the leading global IT standards development organisations that independent and interoperable reference implementations are required. Thus open standards provide a higher certainty of demonstrated interoperability.

Q2.11 Are there any other policy options which would meet the objective more effectively?

No answer at this stage

CHAPTER 3 INTERNATIONAL ALIGNMENT

Q3.1 Is the proposed UK policy compatible with European policies, directives and regulations (existing or planned) such as the European Interoperability Framework version 2.0 and the reform proposal for European Standardisation?

In both cases yes.

The EIF sets specific expectations of member states in seeking compatibility by 2013. The EIF provides a policy and set of criteria but does not determine individual MS procurement policy and definitions. The proposal meets all expectations and Ministerial commitments.

Key to the reform proposal on European standardisation is the recognition that standards resulting from fora and consortia should be given, providing they meet specific criteria. The process includes the establishment of a multi stakeholder platform to assess such standards. In our opinion the proposed UK definition fully meets those commitments and is line with the intention of the revisions. While the proposed EU process is a high-level process for ICT standards and specifications regardless of the domain or sector in which they are to be used, both the EIF and the UK policy specifically refer to software interoperability and thus need to be more precise in the requirements they set compared to the criteria which are to form the base of the proposed EU process.

There is cause for concern that elsewhere in UKG the simple and essential recognition of valid fora and consortia standards is not part of the strategy, and this could undermine the efforts being displayed in this proposal.

Q3.2 Will the open standards policy be beneficial or detrimental for innovation and competition in the UK and Europe?

As in the previous answer the accepted policy behind both EIF and the revision in IT Standardisation is to speed up the market and increase competition and innovation. The EIF demands compatibility across Member States and this was endorsed unanimously by Ministers. Currently progress is such that the UK is in a minority who have yet to formalise these procurement policies.

Q3.3 Are there any other policy options which would meet the objectives described in this consultation paper more effectively?

No answer at this stage.

Note: OpenForum Europe acknowledges all the input received from its members, partners and supporters in the compilation of this document. However, OpenForum Europe does not seek to represent any specific community nor present its opinions as being unanimously supported by its full membership. References given are fully attributed and every effort made to ensure they have been taken in true context.

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