

Comments on the Draft for the European Interoperability Framework ("EIF") 2.0

September 2008

1. INTRODUCTION

The European Committee for Interoperable Systems ("ECIS") welcomes the opportunity to comment on the aims and objectives of the draft for the European Interoperability Framework ("EIF") 2.0 (the "Draft").

ECIS is an international, non-profit association of information technology companies founded in 1989 that endeavours to promote a favourable environment for interoperable ICT solutions. ECIS has for almost twenty years actively represented its members regarding issues related to interoperability and competition before the European institutions and other fora such as WIPO. ECIS' membership includes companies that are intellectual property rights holders and companies that rely on intellectual property rights in order to protect and exploit their technological inventions.

2. STRONG SUPPORT FOR EIF v2.0

ECIS fully supports the aims and objectives of the Draft which re-affirm the original objectives of EIF v1.0. The Draft proposals, if adopted and implemented, would make a significant contribution to encouraging openness and genuine interoperability across borders and software applications used in European eGovernment. The Draft recognises interoperability as a key means to promote efficient pan-European Government Services ("PEGS"). ECIS supports these goals and encourages the Commission to adopt EIF v2.0 as a mechanism to achieve them.

Integration of the EIF into a broader strategic and operational framework is to be welcomed. ECIS strongly supports the integration of the EIF into a broader strategic and operational framework complemented by initiatives such as the European Interoperability Strategy ("EIS"), the European Interoperability Architecture Guidelines ("EIAG") and the European Interoperability Implementation Services ("EIS"). The systematic approach to interoperability that the broader operational framework supports has the potential to provide the necessary tools to serve and advance the development of PEGS and to rapidly deliver more and better PEGS to Citizens and Businesses.

ECIS welcomes the announcement of the new EIF by means of a Communication. ECIS believes that a Communication on implementation of EIF will generate the appropriate level of attention and relevance within the EU institutions and the Member States. This will ensure promotion of a robust strategic approach towards interoperability at the highest level in Europe. It will also provide clear direction that EIF should be observed in practice in all Member States. We also believe the EU institutions should lead by example.

ECIS strongly agrees with the intent of the EIF to ensure that preference is given to Open Standards and Open Specifications in public procurement. Given the significant impact of public procurement on the technologies used in the ICT industry, the Draft rightly notes that "interoperability should be embedded as standard criteria (among others) within public procurement processes, giving preference to Open Standards and Open Specifications where possible."

The Draft's differentiation between Open Standards and open technical specifications is useful. ECIS believes that it is important to clarify the meaning of Open Standards and open technical specifications and identify the differences between them. As a result, such a differentiation will make more distinct the need to address technical specifications developed in global industry fora and consortia as part of the official European standardisation framework.

The so-called "openness continuum" is a useful tool to promote the development and offering of PEGS and the adoption of EIF. The concept of the "openness continuum," which the draft EIF v2.0 and the Common Assessment Method for Standards and Specifications ("CAMSS") initiative adopt, takes into account the fact that sometimes the "most open" standards cannot always be selected. This pragmatic approach introduced in the draft EIF v2.0 can be helpful in certain cases to bridge gaps and avoid standstill.

The Draft correctly draws a clear distinction between the concept of Open Standards and the concept of Open Source. This distinction is crucial in order to avoid the confusion that commonly exists between the two.

3. SOME AREAS FOR IMPROVEMENT

While ECIS strongly supports the EIF v2.0, there are nevertheless some areas that are open for improvement:

The EIF v2.0 should encourage mandatory preferences in public procurement for Open Standards and Open Specifications. The draft EIF v2.0 indicates "that interoperability should be embedded as standard criteria (among others) within public procurement processes, giving preference to Open Standards and Open Specifications." ECIS would suggest that it should be made even clearer that such preferences should be made mandatory. Indeed, the EIF could suggest the revision of Article 23 and of Annex VI of the Directive 2004/18/EC so as to explicitly provide that Open Standards and Open Specifications should be granted priority when setting out the technical specifications in public procurement processes.

In public procurement processes, reference specifications from global industry fora and consortia like W3C, IETF or OASIS should be treated equally to standards developed by formal standardisation bodies. The EU Directive concerning public procurement processes shows a strong preference for standards that have been developed in formal national, European or international standards organisations. However, deliverables from fora and consortia should also be available to use in public procurement provided they meet certain openness criteria. ECIS considers it to be necessary for the Commission to regulate and revise the current European standardisation system in order to ensure that global ICT standards and technical specifications from industry fora and consortia are also available for

use in the European standardisation framework and for direct referencing in public procurement processes and EU policies in general. In the absence of such a revision, many national governments currently choose to include widely available and generally accepted consortia standards, such as for example the W3C accessibility standards, among those which are recommended on a case by case basis. Given the wide availability and acceptance of those standards, these national governments consider such standards as clearly open and thus show strong preference in recommending them. Hence, for that reason this practice of recommending widely accepted fora and consortia standards should be warranted under the existing procurement rules, regardless of a potential change in the overall standardisation regime. ECIS suggests that the EIF should endorse such a practice and outline a possible regulatory path to recognizing consortia and standards that meet openness criteria.

The EIF should emphasise that proprietary products and Open Source offerings should be treated on equal terms. The EIF should ensure that no government will act in a discriminatory way in favour of one or the other solution in the domain of eGovernment services and PEGS. However, ECIS encourages the Commission to consider Open Source solutions and examine whether preference should be given to them where both proprietary and Open Source offerings are available.

ECIS strongly suggests that the EIF should also require that Open Source solutions also implement Open Standards, which are the main requirement to achieve openness.

Additionally, the EIF v2.0 should acknowledge that not all proprietary solutions are to be treated equally. Proprietary solutions which are compliant with Open Standards should be given preference.

So-called "defensive termination" or "defensive suspension" should be endorsed by the EIF v2.0 in the context of the requirement for royalty-free licensing of IPRs with respect to software standards that are in the PEGS domain. However, the meaning of "defensive termination" included in the terms and conditions of an irrevocable licence should be narrowly construed.

"Defensive termination" should take place when a licensee asserts its essential patents against the licensor in court. This is definitely a case in which the licensor should be granted the right to terminate or suspend the licence. Hence, ECIS strongly suggests that this section of the EIF v2.0 needs to be clarified and offers its help to the Commission to that effect.

The actual meaning of the requirements of "no constraints on re-use" should be clarified. This requirement should only be considered from the perspective of the standard being widely deployed rather than the standard being changed and re-used. ECIS suggests that the Commission could provide a practical example of building on a core interoperability standard or how the requirement refers to the implementation of the actual standard and not to the copyright protecting the standard.

Stronger compliance tools should be provided in order to enforce the EIF. The EIF should not only function as a guidance tool providing recommendations on interoperability in the context of PEGS. It should also constitute the grounds for developing a binding general policy for all Member States and EU institutions alike on the subjects addressed by the EIF.

The draft EIF v2.0 acknowledges this need and proposes the establishment of a NIF Observatory. However, it is important for Member States to take common steps to ensure compliance with the EIF in the formulation of National Interoperability Frameworks. Hence, Member States should be required to comply with the key principles of the EIF.

The documents of the EIS, the EIAG, the EIS, as well as initiatives such as the CAMSS and the SEMIC.EU, which complement the EIF, should be made publicly available. Considering that the EIF is integrated into a broader strategic and operational framework comprising these initiatives, it is currently impossible fully to understand the functions of the EIF and it is unclear whether specific aspects will be dealt with in one of these other documents. Hence, the Commission should act to resolve any uncertainties regarding the interrelation of the different initiatives and the respective documents.

The EIF should emphasise that interoperability is a global challenge, not only a regional one. Only Open Standards and Specifications that are widely available and widely implemented will yield real interoperability. The EIF should properly put the PEGS effort in a global context. All governments, across the globe, are struggling with these same issues. Many regions look to the EU for guidance, notably South-America, Asia and a number of countries in the Middle East. National interoperability frameworks should not be an occasion to showcase national standards, especially if those standards are not interoperable with existing global standards. A case in point is ISO's Common Criteria standards in computer security that now are being questioned by the Chinese government, which wants its own approach. A united US and European response both in industry and government has been to oppose such measures which serve only to showcase the current systemic weaknesses at regional and national levels regarding interoperability and compliance with global standards.

Conclusion

ECIS strongly welcomes the draft EIF v2.0. Although there are some areas that can be improved, the strong stance on openness and interoperability taken by the Draft will have a positive impact in the ICT market and in PEGS across Europe and beyond. ECIS' remarks only relate to certain points that would make EIF a stronger tool to promote openness and interoperability across Europe. Therefore, ECIS looks forward to seeing the final version of the EIF.