



Position Paper

ANEC position on European Commission White Paper

**“Modernising ICT standardisation in the EU-
The way forward”**

September 2009

ANEC-ICT-2009-G-040

List of contents

1. Background	2
2. Executive Summary	3
3. ANEC's answers to consultation policy questions.....	4
Acknowledgements	9
APPENDIX – About ANEC and other documentation	9
A.1 About ANEC	9
A.2 Contact person at the ANEC Secretariat	9

1. Background

Information Communications Technologies (ICT) products and services, such as mobile phones and the Internet, play an increasing essential role in consumers everyday lives, from shopping on-line to listening to music. However, although they have the potential to improve consumer welfare, by making a greater range of products and services available, new technologies pose several challenges in terms of protection of traditional consumer rights in an on-line environment. These include data privacy and the access of all consumers – including elderly people and people with disabilities – to the latest products and services.

It is the aim of ANEC to promote and defend consumer interests in this field as we believe standards can be used to complement regulation and policies in meeting those new challenges.

Bearing this in mind, ANEC contributed¹ to the European Commission study on the future ICT standardisation policy and participated in the Steering Committee and Working Groups, set up to oversee the study. We have made several written comments as well as an oral statement during the Open Workshop on 24 May 2007². ANEC also continues to attend and contribute to the follow-up meetings of the Steering Committee, now taking place.

ANEC welcomes the opportunity of the present consultation on the European Commission White Paper “Modernising ICT standardisation in the EU - The way forward” to express our point of view on the suggested future policy actions and their impact on consumers.

¹ ANEC-ICT-2006-G-044

² ANEC-ICT-2007-G-015

2. Executive Summary

With 114 million subscribers, the EU is the largest world market for fixed internet broadband access. However, even if broadband is available to more than 90% of EU population, only 50% of households effectively use it because it is too expensive or complicated to use³.

Due to the enormous impact of the Information Society on the consumer, it is vital that standards elaborated for Information Society products and services take into account the views of the consumer. As a consequence, ANEC believes that it is essential that the ICT standardisation process ensures full and effective consumer participation whilst responding to the fast changing market needs.

According to the European Commission White Paper, a more integrated approach between the European Standards Organisations (ESOs) and informal fora and consortia is suggested to modernise ICT standardisation in Europe. However, ANEC is worried that the direct use of informal standards could preclude the public interest from being reflected in the development of specifications to support Information Society policy issues.

In ANEC's opinion, European ICT standardisation should be an open, transparent and consensus-driven process, which allows all stakeholders to participate and safeguard that their interests are taken into account in the future standardisation policies.

³ i2010 — Annual Information Society Report 2009, Benchmarking i2010: Trends and main achievements, {COM(2009) 390}

3. ANEC's answers to consultation policy questions⁴

(a) Do you agree that the attributes for standards to be associated with EU legislation and policies should be integrated in the future ICT standardisation policy as set out in section 2.1 of the White Paper?

Yes, ANEC agrees with the suggested attributes as they go beyond the WTO TBT Agreement "Code of Good Practice for the preparation, adoption and application of standards", especially as far as balanced representation of different stakeholders is concerned. However, ANEC suggests adding "Enhanced consumer participation" to the list of attributes as consumer participation is lagging behind because of the lack of human and financial resources, especially at the national level⁵.

Taking into account that the lack of public funding is one of the major obstacles for consumer participation in standardisation, it is crucial to provide funding for the co-ordination of consumer participation at EU level and to encourage national governments to provide resources to consumer organisations at national level.

Having said this, however, ANEC questions the "implementability" of such a list of criteria for ICT standardisation as it is not clear at all who would be responsible for "administering" them, whether the list is exhaustive and which legal basis would the list be built upon.

(b) Do you agree that the public procurement provisions of CD 87/95 should be updated so that public authorities can more easily acquire ICT services, applications and products that fulfil their specific requirements and in particular an adequate level of interoperability?

No, ANEC does not see the need to amend Council Decision 87/95 as we do not consider it to be an obstacle for public authorities to make use of the best technical specifications needed in their tenders.

Since 2006, the European Public Procurements rules⁶ enable contracting authorities to define technical specifications for the products they intend to purchase, while respecting the principles of transparency and openness of tenders to competition, equal treatment of tenderers and non-discrimination. Contracting authorities can include technical specifications in terms of performance or functional requirements, thus allowing tenderers to present interoperable and innovative solutions.

⁴ On-line questionnaire: <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=ICTstandardisation>

⁵ Access to Standardisation Study for the European Commission, Enterprise and Industry Directorate-General, March 2009

⁶ EU Directive 2004/18/EC

(c) Do you agree with the need to clarify that when they are defined within the context of ICT strategies, architectures and interoperability frameworks, the implementation of standardised interfaces can be made a requirement in public procurement procedures, provided the principles of openness, fairness, objectivity and non-discrimination and the public procurement directives are applied

Please see answer under question (b)

(d) Do you agree that standardisation and research stakeholders, in particular ETPs, should be regularly consulted to ensure that relevant European research initiatives contribute most effectively to ICT standardisation activities?

Yes, in ANEC's opinion, robust standards, based on scientific evidence and data, can contribute to innovation and the competitiveness of the European economy as well as to improved consumer protection and welfare. This is particularly the case of sectors such as the accessibility of ICT products and services as research activities on accessibility could lead to innovative solutions in ICT standards.

Nevertheless, we think that to exploit the research results better, it is essential to foster stakeholder coordination, both at the national and European level. For example, there seem to be a lack of coordination between the public authorities in charge of ICT research projects (European Commission, ministries, agencies) and those responsible for using ICT standards (public procurers).

(e) Do you agree that standardisers should adapt their procedures where necessary to ensure that contributions from research organisations, consortia and projects facilitate the timely production of ICT standards?

No, ANEC does not see the need for the moment to go beyond what is currently done in the European Standards Organisations.

(f) Do you agree that Member States should similarly consider regular consultation of standardisation and research stakeholders to ensure that relevant national research initiatives contribute most effectively to ICT standardisation activities?

Please see answer under question (d)

(g) Do you agree that ICT standards developing organisations should, subject to competition law and respecting the owner's IPR: implement clear, transparent and balanced IPR policies which do not discriminate and allow competition among different business models, ensure the effectiveness of procedures for IPR

disclosures, and consider a declaration of the most restrictive licensing terms, possibly including the (maximum) royalty rates before adoption of a standard as a potential route to providing more predictability and transparency?

Yes, ANEC is of the opinion that standards should be widely available to all interested parties and not be used as a means of market segmentation. Therefore, ICT standards should either be free of Intellectual Property Rights concerns, or licensable on a fair, reasonable and non-discriminatory basis (FRAND).

(h) Do you agree with enabling the referencing of specific fora and consortia standards in relevant EU legislation and policies subject to a positive evaluation of the standard and the forum or consortium processes with regard to the attributes list as described in chapter 2.1 of the White Paper?

No, ANEC does not agree with the direct referencing of fora and consortia deliverables as it will inevitably lead to a further fragmentation of the European standardisation landscape, making it difficult for less-well resourced stakeholders to contribute effectively to the standards development process.

According to the White Paper, most often, the formal standards-making process is too slow to produce the standards required by the ICT market in due time. ANEC believes the European Standards Organisations have done much to reduce development times in recent years and the issue now is more about attracting the particular ICT experts to the formal standardisation process than the speed of development. Further decreases in lead-time should not be achieved at the expense of quality and democracy. ANEC believes a balance between efficiency and openness must always be maintained.

For instance, the everyday use of RFID technologies – especially within the context of the ‘Internet of Things’ – poses risks to consumer data privacy and security. But most of the industry-developed standards on RFID do not follow the principle of “privacy by design” in order to allow consumers to ‘opt in’ to the use of these technologies rather than ‘opt out’, despite prevailing legal requirements⁷. A standardisation mandate has been issued to the ESOs to develop standards to implement the Commission Recommendation on RFID, and thus the principle of “privacy by design”⁸.

Acknowledging the reality of the ICT standards scene and the importance of web accessibility standards for consumers, ANEC joined W3C in October 2004 for a three years pilot project of consumer participation in informal standardisation. The aim of the project was to assess whether consumers could have an impact in such an informal organisation. The final results show that considerable resources (both human and

⁷ COMMISSION RECOMMENDATION on the implementation of privacy and data protection principles in applications supported by radio-frequency identification, C(2009) 3200 final

⁸ Mandate 436 ‘Information and Communication Technologies applied to Radio Frequency (RFID), which expressly refers to the implementation of the RFID Recommendation.

financial) are needed for consumers to express and have their voice heard. Taking into account that if limited resources are invested into the work, constraints and limitations in meetings participation and attendance rights may occur, ANEC initiated with W3C a reflection on the need to optimise our scarce resources, which will have to cover both the W3C membership fee and the expert international travel expenses. The evident need of this ‘tailor-made’ approach is not however in line with the White Paper recommendation on referencing of specific fora and consortia standards, which aims at establishing general provisions.

Furthermore, although the White Paper recommends the future recognition of consortia standards and specifications in support of European policies only if they respect such attributes as openness and transparency, it is far from clear how the Commission intends to ‘scrutinise’ the procedures of informal standards-setting bodies to ensure these democratic values are implemented. Concerning the principle of ‘openness’ for example, does it imply that no membership fees would be required for NGOs wishing to participate in a given forum or consortium? Moreover, will a series of ‘remedies’ be introduced to deal with cases where, ex post, it is discovered that a given forum did not respect the attributes?

Finally, the White Paper states the direct recognition of fora and consortia, often based outside the EU, would ‘facilitate cooperation with major trading partners’. Although ANEC acknowledges the challenges of markets globalisation, especially in the ICT sector, we must stress that not all ‘trading partners’ may be keen to use standardisation as a tool to ensure a level playing field for all operators.

(i) Do you agree that better cooperation should be promoted between fora and consortia and ESOs on the basis of a process which would lead to standards issued by the ESOs?

Yes, ANEC believes that the European Commission should encourage the ESOs to collaborate more closely with fora and consortia and fora and consortia should be encouraged to consider the ESOs as the means for their standards to receive ‘formal European endorsement’.

But a pre-requisite is that such ‘formal European endorsement’ must be both genuine and testing. The ‘fast-track’ procedures of ISO/IEC – which amount to little more than rubber stamping of proprietary specifications – must not be repeated at European level. The proposed adoption in 2007 of industry forum standard through fast-track as ISO/IEC 29500 *‘Information technology – Office Open XML file formats’* questioned the credibility of the formal standards system.

And in areas where the Commission does not have confidence in the ability of the formal European standardisation system to deliver standards that are fit for the purpose of protecting consumers (e.g. for aspects such as data protection, security, accessibility), ANEC believes it should not hesitate to consider legislation.

(j) Do you agree with the establishment of a permanent, multi-stakeholder, ICT standardisation policy platform (with a wider membership than the Member State SOGITS Committee previously established by Council Decision 87/95) to advise the Commission on all matters related to the European ICT standardisation policy and its effective implementation?

Yes, in principle, ANEC would be favourable to such an initiative, although the modalities are however rather obscure to us. ANEC would have expected the European Commission to provide details about the formal status of the “platform”. We wonder whether it would be an “Expert group” or a “Committee” under comitology procedure⁹ and if the latter is the case, would it have advisory or regulatory function? This of course depends on the legal basis delegating the implementing task to the Commission.

(k) Do you agree that the ESOs and other ICT standard developing organisations should be invited to review the function and composition of the current ICTSB to make it more efficient?

Yes, ANEC agrees on a more efficient coordination mechanism between ESOs and fora and consortia in order to enhance collaboration and avoid duplication of resources.

General Remarks

Due to the enormous impact of the Information Society on the consumer, it is vital that standards elaborated for Information Society products and services take into account. The economic impact of leaving consumer representation out of the early stages of standards formulation, often by fora and consortia, is high creating wasteful economic activity such as when inadequate products and services come to market.

⁹ C(2005)2817 and Decision 2006/512

Acknowledgements

This position paper has been prepared in consultation with the ANEC membership.

ANEC wishes to thank those who have actively contributed to the drafting of this position paper.

APPENDIX – About ANEC and other documentation

A.1 About ANEC

ANEC is the European Consumer voice in standardisation, representing and defending consumer interests in standardisation and certification, and in policy and legislation related to standardisation. Our aim is a high level of consumer protection. ANEC was set up in 1995 as an international non-profit association under Belgian law. It represents consumer organisations from the European Union Member States and the European Free Trade Association (EFTA) countries. Our General Assembly is composed of one national member per country, nominated jointly by the national consumer organisations in their country.

A.2 Contact person at the ANEC Secretariat

Chiara GIOVANNINI
Research and Innovation Manager

More information about ANEC and its activities is available at www.anec.eu

Should you have any problems in accessing the documentation, please contact the ANEC Secretariat.

☎ +32/2-743 24 70

📠 +32/2-706 54 30

✉ anec@anec.eu

📍 Avenue de Tervueren 32, box 27 – BE-1040 Brussels, Belgium

This document is available in English upon request from the ANEC Secretariat or from the ANEC website at www.anec.eu

© ANEC 2009

This document may be quoted and reproduced, provided the source is given.