EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL
Innovation policy
ICT for Competitiveness and Innovation

Brussels, 4 December 2009
D/4 (2009) DB/AL/pm D (2009) 40002

MODERNISING ICT STANDARDISATION IN THE EU – THE WAY FORWARD

OVERVIEW OF THE RESULTS OF THE PUBLIC CONSULTATION ON THE WHITE PAPER

1. EXECUTIVE SUMMARY

The open consultation on the White Paper proposing possible orientations for a new European ICT standardisation policy was launched on 3 July 2009 and closed on 15 September 2009.

Following the wide publicity given to the consultation, especially through standardisation related committees and organisations, a total of 130 responses were received; 53 from industry or business organisations, 27 from standardisation bodies, 18 from individuals, 17 from public authorities and the rest from research or other societal organisations. All of the responses have been published in full on the 'Europa' website[1].

The objective of the consultation was to ascertain the degree of consensus on the possible proposals for policy choices and specific measures that would help the European ICT standardisation policy to better respond to industry and societal needs.

The White Paper discussed possible proposals in 6 main policy domains of European ICT standardisation policy:

- Attributes of ICT standards associated with EU legislation and policies
- The use of ICT standards in public procurement
- Fostering synergy between ICT research, innovation and standardisation
- Intellectual property rights in ICT standards
- Integration of fora and consortia in the ICT standardisation process
- Enhancing the dialogue and partnership with stakeholders

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[1] http://ec.europa.eu/enterprise/sectors/ict/standards/extended/consultation_2009_en.htm

While the overall response to all the proposals contained in the White Paper was broadly positive, most of the respondents provided extensive comments and additional input that will facilitate further refinement of thinking on many of the issues.

The proposed attributes for ICT standards to be associated with EU legislation and policies and the link between those attributes and WTO criteria were very much welcomed. Some respondents suggested that certain attribute definitions needed further clarification while others called for clear and transparent processes and procedures for evaluating the compliance of specifications with the attributes. In addition, some felt that any future ICT standardisation policy needed to cover the coherence of standards.

A need for more flexibility for public procurement was widely supported as was the need for public procurement to be based on open and transparent processes allowing for fair competition. There was also broad support for the compliance with the attributes as a means of identifying standards which could be referred to in public procurement activities.

Although most respondents felt that greater synergy between ICT R&D and standardisation would benefit researchers and standardisers alike, there was strong opposition to any mandatory requirements governing the relationship between those activities. Many respondents also pointed out that the strong business driver of standardisation was not always present in R&D activities.

With regard to the treatment of intellectual property rights (IPR) there was a large consensus that standards developing organisations should set open, transparent, fair and predictable IPR policies which also take account of emerging business models. While many respondents felt that the use of *ex-ante* declarations of maximum licensing rights was an option which should be considered by each SDO in order to increase predictability, most felt it should not become a mandatory approach.

While better cooperation between fora and consortia and ESOs was supported, the majority of respondents (but not the national standardisation organisations) were also of the opinion that the possibility of directly referencing specific fora and consortia deliverables in support of EU legislation or policy was needed as well.

Finally, the creation of a multi-stakeholder platform, as an extension of SOGITS, was very widely welcomed. However it was also felt that its composition, rules and procedures would need to be carefully and clearly defined.

2. INTRODUCTION

In 2006, the Commission launched a review with a study to analyse the current EU ICT standardisation policy and bring forward recommendations for its future development. The study report was published in July 2007 and a web-based consultation followed. The comments received were published on the Europa website and an open conference was held in February 2008 to examine the study recommendations and those comments.

As a result, it was decided to present a White Paper (COM(2009) 324 of 3.7.2009)to ascertain the degree of consensus on the possible proposals for policy choices and specific measures that would help the European ICT standardisation policy better respond to industry and societal needs.

An open consultation on the White Paper was launched on 3 July and closed on 15 September 2009. Responses could be provided through the Commission's web-based interactive policy making tool (IPM) or through a dedicated email address or by post.

3. QUESTIONNAIRE

The White Paper discussed possible proposals in 6 main policy domains of European ICT standardisation policy:

- Attributes of ICT standards associated with EU legislation and policies
- The use of ICT standards in public procurement
- Fostering synergy between ICT research, innovation and standardisation
- Intellectual property rights in ICT standards
- Integration of fora and consortia in the ICT standardisation process
- Enhancing the dialogue and partnership with stakeholders

Within each area, the White Paper raised a number of specific questions to identify the support for potential legislative or other changes which could be envisaged to help a new ICT standardisation policy reach the objectives set, including interoperability goals.

4. RESPONDENTS

Of the 130 responses received, 1 arrived by post and the rest were evenly shared between the IPM tool and email.

18 individuals responded and 112 answers were made on behalf of organisations.

The 112 answers on behalf of organisations were subdivided as follows:

- 35 ICT service and product suppliers,
- 27 standardisation organisations (10 international organisations, 9 national standardisation bodies, 4 European organisations and 4 US organisations),

- 17 industry associations (covering users and producers),
- 17 Member State public authorities,
- 6 organisations representing societal interests,
- 5 organisations with a specific R&D focus,
- 3 SME associations, and
- 2 other organisations.

69 respondents supported all of the possible proposals although most provided additional comments to explain their views.

51 respondents did not agree with one or more of the possible proposals, again providing supporting justification.

6 respondents focused on one particular issue and did not reply to the rest of the questionnaire.

4 responses were unclear or not pertinent.

Overview of responses per country
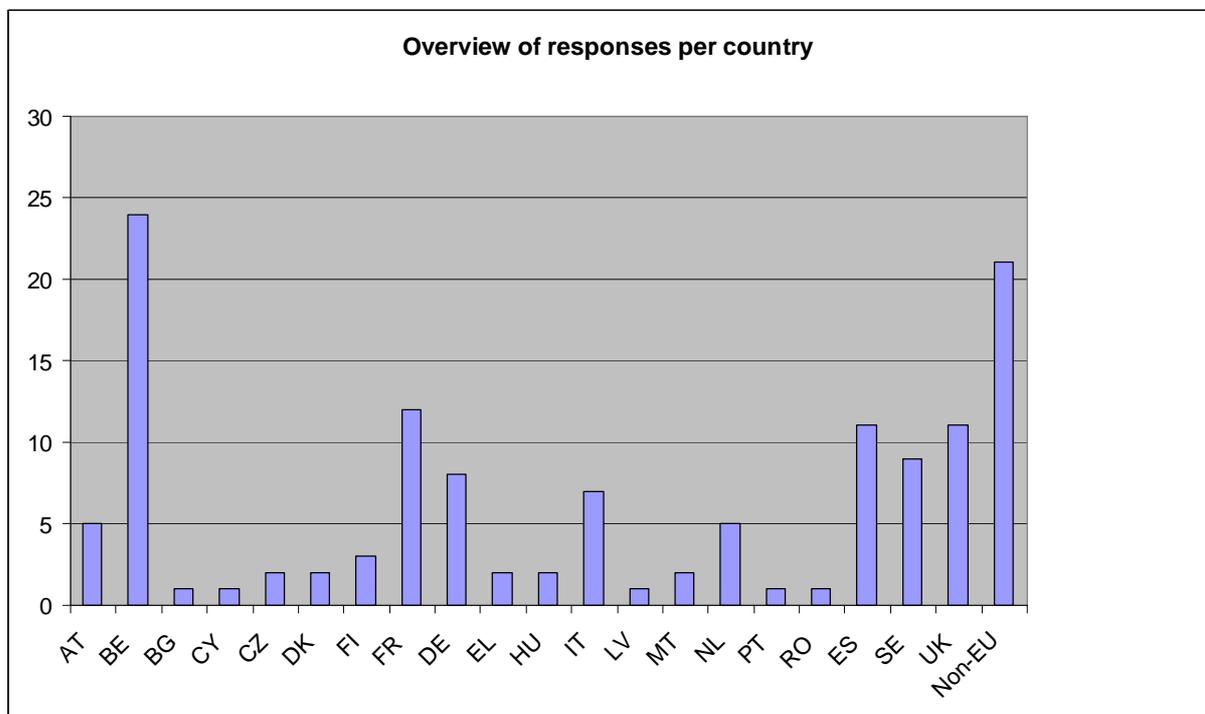
Responses were received from a total of 20 Member States however some of these responses were made on behalf of European or global companies and organisations.

5. ATTRIBUTES OF ICT STANDARDS ASSOCIATED WITH EU LEGISLATION AND POLICIES

One specific question was raised in the White Paper in this area:

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?

	Number of Responses	% of total respondents	% of Positive/Negative responses
Positive reply	115	88%	96%
Negative reply	5	4%	4%
No answer/unclear	10	8%	-
Total	130	100%	100%

To facilitate the use of the best available standards in support of EU legislation and policies, the White Paper proposed that requirements be laid down, in the form of the list of attributes, for such standards and their associated processes. Compliance with the attributes would help ensure that wider policy objectives as well as public interest expectations were met.

The vast majority of respondents welcomed the suggestion to integrate the proposed set of attributes into the revised European ICT standardisation policy and to use this set of requirements as a basis for evaluating the eligibility of ICT standards for association with European legal frameworks and policies.

The link between the proposed set of attributes and the criteria laid down by the World Trade Organisation (WTO) for international standardisation organisations was very much welcomed. Many respondents noted that the principles of openness, consensus, balance and transparency were already applied by the European standardisation bodies and by certain fora and consortia.

Various respondents underlined the need to analyse the criteria thoroughly, especially those attributes that relate to the standards themselves with the view to allowing them to be used for evaluating a specific standardisation deliverable in a given context. In particular, they felt that the attributes covering IPR policy requirements, relevance, technology neutrality and quality needed careful consideration to make sure they unambiguously related to any standardisation deliverables.

Some respondents called for further clarification of the attributes governing the standardisation processes that led up to the production of a specific deliverable, such as openness, consensus and balance.

Attention was also drawn by many to the fact that organisations such as IETF, OASIS and W3C are widely perceived as being as open and transparent in their processes as the formal standardisation bodies while, however, reaching compliance with the attributes by other means than those applied within formal standardisation. For example, participation in their activities is usually open to any organisation or individual on the basis of direct membership.

Several respondents furthermore stressed the need for adequate processes to ensure consumer and SME expectations were met using the attributes list, while others suggested adding "coherence" either to the list of attributes or as a general consideration in any revised legislation to avoid any risk of duplicating, conflicting and competing standards.

Nearly all respondents also pointed to a need to define and implement clear assessment processes, including responsibilities and decision-making procedures, to evaluate compliance of standards with the attributes list. In that regard several relevant evaluation processes were cited such as the ARO process applied within ISO/IEC JTC1 and the CAMSS process developed in the context of the EIF.

6. THE USE OF ICT STANDARDS IN PUBLIC PROCUREMENT

Two specific questions were raised in the White Paper in this area:

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?*

	Number of Responses	% of total respondents	% of Positive/Negative responses
Positive reply	115	88%	97%
Negative reply	4	3%	3%
No answer/don't know	11	8%	-
Total	130	100%	100%

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?

	Number of Responses	% of total respondents	% of Positive/Negative responses
Positive reply	112	86%	94%
Negative reply	7	5%	6%
No answer/don't know	11	8%	-
Total	130	81%	100%

Many respondents underlined the potential impact of public procurement with respect to the early market uptake of innovative solutions. They also recognised the potential for support to the further deployment of standards via public procurement.

Respondents largely highlighted the dramatic evolution that has taken place in the ICT environment over the last decade, the subsequent growth in the need for electronic data exchange between public administrations and between those administrations and business and citizens. In domains such as eGovernement, eLearning, eAccessibility and eHealth, interoperability was seen as a key issue in reaching policy objectives.

Respondents therefore broadly agreed with the suggestion 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 their need for an adequate level of interoperability.

Most of the respondents furthermore agreed that the requirements within given ICT architectures and strategies are such that public authorities may in specific cases need to impose specific interfaces in order to reach their interoperability objectives.

Many comments however also stressed the need to respect the principles of openness, fairness, transparency and non-discriminations when referencing standards and specifications in public procurement. They therefore felt that standards referred to in public procurement should comply with the attributes set out in the White Paper.

Several respondents highlighted the impact of IPR issues in public procurement, some of them arguing that IPR should at least be made available at fair, reasonable and non-discriminating conditions, while others argued that royalty-free conditions were needed in order to guarantee fair competition and support innovation.

A few respondent were however of the opinion that no additional flexibility was required in order to allow procurement of effective ICT services. They felt that the necessary levels of fair competition, openness and transparency can already be realised by adherence to the

public procurement legislation laid down by Directive 2004/14 and by referring only to standards issued by the recognised standardisation organisations CEN, CENELEC and ETSI.

7. FOSTERING SYNERGY BETWEEN ICT RESEARCH, INNOVATION AND STANDARDISATION

Three specific questions were raised in the White Paper in this area:

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

	Number of Responses	% of total respondents	% of Positive/Negative responses
Positive reply	114	88%	95%
Negative reply	6	5%	5%
No answer/don't know	10	8%	-
Total	130	100%	100%

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?

	Number of Responses	% of total respondents	% of Positive/Negative responses
Positive reply	108	83%	90%
Negative reply	12	9%	10%
No answer/don't know	10	8%	-
Total	130	100%	100%

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?*

	Number of Responses	% of total respondents	% of Positive/Negative responses
Positive reply	114	88%	95%
Negative reply	6	5%	5%
No answer/don't know	10	8%	-
Total	107	80%	100%

The general thrust of the suggestions put forward in the White Paper was accepted by the vast majority of respondents. They largely felt that the facilitation of knowledge transfer between R&D and standardisation would certainly raise awareness of the potential benefits standardisation can provide.

However, although the respondents clearly support the idea of establishing regular dialogues between the R&D and standardisation communities, the majority of respondents expressed concern about the dangers of bureaucratising such relationships and they were firmly opposed to the introduction of any mandatory links between R&D projects and standardisation.

Many respondents representing industry drew attention to the fact that the transfer of technology into standardisation is always a business decision. Moreover many R&D results do not automatically call for further standardisation efforts. Some respondents feared that an institutionalised link between standardisation and R&D would lead to the publication of many standards with no direct business relevance and little prospect of implementation.

The majority of respondents therefore support dialogue between European Technology Platforms (ETPs) and standardisers at the planning phase of R&D initiatives and an increased exchange of information between both communities.

On that basis the majority of the respondent saw no need for additional measures to improve standardisation processes or the procedures of standards developing organisations. For formal organisations and fora and consortia alike, the R&D community felt it already had sufficient opportunities to liaise with and participate in standardisation activities.

With a few exceptions, most of the Member States do not appear to have major R&D initiatives that would be of interest for ICT standardisation. Respondents in general were also of the opinion that the dialogue between the research community and standardisation at national level should be established in an informal and non-bureaucratic manner.

8. INTELLECTUAL PROPERTY RIGHTS IN STANDARDISATION

One specific question was raised in the White Paper in this area:

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 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?*

	Number of Responses	% of responses	% of Positive/Negative responses
Positive reply	104	80%	87%
Negative reply	16	12%	13%
No answer/Unclear	10	8%	-
Total	130	100%	100%

The IPR related suggestions triggered a large amount of comment and additional input to the ongoing policy discussion concerning the way to deal with IPR in ICT standardisation. In fact a number of respondents only provided comments on the IPR related proposals and did not comment on any other aspect of the White Paper.

The majority of respondents agreed with the problem analysis in the White Paper. IPR is perceived as one of the most critical issues in ICT standardisation, especially when looked at in relation to the suggestions made concerning public procurement and further cooperation with fora and consortia.

Respondents for the most part agreed with the proposition that ICT standards developing organisations should take account of all stakeholders' interests (IPR owners, standard implementers and end users) and implement clear and balanced IPR policies which do not discriminate and allow competition among different business models.

Most of the respondents seem to be happy with the FRAND approach to IPR licensing, although several of them felt that it could be improved in order to provide more clarity, transparency and predictability. Some respondents were of the opinion that FRAND with no royalty-free option was the only way to deal with IPR in standardisation, arguing that this would ensure the return on investment required to finance further research activities. The majority of the respondents supporting FRAND policies, however, supported the inclusion of royalty-free approaches, noting that the development of other business models could also income to support further R&D.

Several respondents were of the opinion that IPR should always be made available on a royalty-free basis for standards associated with legal frameworks and/or public policies.

Many respondents drew attention to the fact that the fast evolution of ICT technologies and the subsequent increase in the number of patents in the ICT domain have dramatically increased the complexity of monitoring the implementation of IPR policies. Moreover, the time spent negotiation licensing arrangements was said by many to be out of step with the speed of evolution or innovation.

Although many felt that there might be scope for improving FRAND, the possibility of requiring a declaration of the most restrictive licensing terms, including (maximum) royalty rates before adoption of a standard, was not generally accepted as a route to providing more predictability and transparency.

While the users of technologies broadly-speaking supported the proposal, technology providers generally have no wish to see such an approach become mandatory, arguing that it would prolong standardisation discussions and could even lead to an increased level of royalties. Some technology providers and industry associations however could consider the inclusion of *ex-ante* declarations of royalty rates on a voluntary basis.

Most of the standards developing organisations also opposed the proposal. They were of the opinion that "commercial" discussions should not take place in standardisation organisations. A few standards developing organisations though could accept a voluntary approach within their IPR policies and a very few already foresaw such a possibility.

Some respondents also draw attention to the copyright issue, noting that that the free availability of standards would increase accessibility and consequently the likelihood of implementation, especially among SMEs.

9. INTEGRATION OF FORA AND CONSORTIA IN THE ICT STANDARDISATION PROCESS

Two specific questions were raised in the White Paper in this area:

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?*

	Number of Responses	% of responses	% of Positive/Negative responses
Positive reply	104	80%	87%
Negative reply	16	12%	13%
No answer/don't know	10	8%	-
Total	130	100%	100%

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?

	Number of Responses	% of responses	% of Positive/Negative responses
Positive reply	110	85%	92%
Negative reply	10	8%	8%
No answer/don't know	10	8%	-
Total	130	81%	100%

The majority of respondents felt that the dynamics of the ICT sector and the growing need for interoperability solutions required fast and effective implementation of standards. They felt this was illustrated by the fact that in new and innovative domains, like the internet, several non-ESO standards developing organisations such as IETF, OASIS and W3C have gained wide market acceptance and are recognised as the leading standards development organisations in their specific domains.

The majority of the respondents therefore agreed with the proposal to enable direct referencing of specific fora and consortia standards in relevant EU legislation and policies to help achieve interoperability objectives, subject to a positive evaluation of the standard and the related forum or consortium processes with regard to the attributes list. Respondents were of the opinion that this would permit a balance to be struck between market requirements and the public interest in fostering the implementation of standards for interoperability.

Many of the respondents provided additional comments stressing that the referencing of fora and consortia standards in European policies and legislation to ensure interoperability should focus primarily on existing specifications in technical domains that are not covered by the ESOs and for which the technical responsibility clearly belongs to the specific forum or consortium. In that context, they felt that the stakeholder platform and the Member States would have a key role in monitoring the coherence of ICT standards and their compliance with the attributes thereby ensuring that they responded to identified public interest expectations as well as offering business relevance.

16 respondents, including 9 national standardisation bodies, CEN and CENELEC, opposed the possibility of directly referencing any fora or consortia specifications in legislation or policies. These organisations believe that the ESOs should keep a monopoly on standards for referencing in EU legislation and policy, noting the successful application of those principles in respect of the "New Approach" internal market/product safety legislation.

Moreover several national standards bodies highlighted the range of existing processes which allow the transposition of fora and consortia specifications into European standards which, they felt, made the proposal for direct referencing superfluous. However, the

implicit assumption that fora and consortia would be willing to transfer their specifications to ESOs was rejected by several respondents.

Unlike the national standards bodies, most of the national authorities responding to the White Paper consultation generally welcomed these proposals subject to clear and transparent procedures for evaluating fora and consortia specifications. Several would also like to see SMEs and consumer organisations being helped to participate in the activities of international standards developing organisations.

Some respondents were of the opinion that fora and consortia fully complying with the attributes should be recognised as ESOs and included as such in the annex of Directive 98/34. Other respondents feared that the strong industry focus in some fora and consortia may not afford sufficient access to societal representation and ran the risk of producing specifications which were not technology neutral.

A great many comments stressed the need for differentiation between various fora and consortia highlighting the gulf between, on the one hand, well-established organisations which have implemented advanced open, transparent and effective processes and which have a broad membership, and on the other, the "closed groups" which are not open to the participation of all stakeholders and often have a limited scope and set of objectives.

A large majority of respondents agreed with the proposal to promote better cooperation between fora and consortia and ESOs on the basis of a process which would lead to standards being issued by the ESOs. Some added however, that such a cooperation process should be subject to case by case arrangements clearly defining all aspects of the cooperation and the related responsibilities, e.g. for maintenance, participation, visibility, publication and copyright. Moreover, since the cooperating organisations do not necessarily have identical IPR policies, an agreement on IPR issues prior to the start of the cooperation was critical.

It has to be noted that several respondents, mainly industry and non-formal standards developing organisations, were opposed to such a 2-step process. Not only is the process lengthy, but many fora and consortia see no added value since it focuses on procedural aspects and does not lead to a wider implementation of their specifications, which in most cases are already implemented at global level.

In that regard several respondents noted the risk of successive processes changing the content of a specification. However they also felt that if change were excluded, it would leave a simple duplication or a rubber stamping process which would be best avoided, adding that there was a danger of European isolation from global standardisation as other regions implemented specifications directly without transposition into national standards.

10. ENHANCING DIALOGUE AND PARTNERSHIP WITH STAKEHOLDERS

Two specific questions were raised in the White Paper in this area:

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?

	Number of Responses	% of responses	% of Positive/Negative responses
Positive reply	113	87%	94%
Negative reply	7	5%	6%
No answer/don't know	10	8%	-
Total	130	100%	100%

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?

	Number of Responses	% of responses	% of Positive/Negative responses
Positive reply	113	87%	97%
Negative reply	4	3%	3%
No answer/don't know	13	10%	-
Total	130	100%	100%

The overwhelming majority of respondents agreed with the proposal to extend the current Member States committee SOGITS, set up by Council Decision 87/95, to allow the participation of all ICT standardisation stakeholders and transform it into a permanent multi-stakeholder ICT standardisation platform. A few respondents were of the opinion that such a Platform should be set up and monitored by the ESOs.

In their comments and contributions, the respondents underlined that the platform should enhance the dialogue on ICT standardisation policy between all stakeholders involved but that the composition of the platform was critical, should be balanced, and should include SME and consumer representatives.

Respondents agreed with the scope and tasks set out in the White Paper and noted that the Member States must be able to execute their responsibilities in accordance with the

rules and procedures of the Institutions. Comments underlined the need for the platform to focus on the implementation of ICT standards for Europe ensuring an adequate level of interoperability and coherence, while balancing industry expectations with public interest needs.

With respect to reviewing the functioning and composition of the ICT Standards Board (ICTSB), the majority of respondents supported the proposal made by the White Paper. They felt that the ICTSB should be composed of relevant standards developing organisations and could be hosted by the ESOs. They also noted that the ICTSB should complement the platform by coordinating standard setting to support the policy orientations agreed by the platform.

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