Impact assessment study on the "standardisation package"

Request for information from <u>Forums and Consortiums</u>

The legal basis for European standardisation has not been generally reviewed since its adoption (besides the recognition of ETSI as an ESO in 1992). In the context of new challenges, it has become necessary to review the current European standardisation system (ESS) in order for it to remain successful and to adapt it to the needs of the forthcoming decade by developing strategic recommendations for action by the European Commission and Member States.

The Commission is considering a number of possible measures that could be used to help strengthen the ESS, and is exploring ways in which standardisation bodies (fora and consortia) other than the three formally recognised ESOs, as well as their standardisation products can, where appropriate, contribute to European standardisation. Specifically the Commission is considering three provisions that would allow, under certain conditions, a greater role for 'other' fora and consortia and their products within the European standardisation system

- P7 - ESOs to open the possibility to approve documents developed by forums and consortiums as European Standards following a simplified procedure, provided those forums and consortiums have developed the documents according to the WTO/TBT standardisation principles[1]

- P19 - Extend the list of recognised ESOs beyond CEN, CENELEC and ETSI and make it possible to allocate standardisation requests (mandates) to these other organisations

- P23 - Commission to be able to request development of standards to any organisation via call for tenders to all Standards Developing Organisations meeting the WTO/TBT requirements

The Commission wishes to understand some of the implications of these changes, were they to be implemented, and specifically wishes to understand the following:

<u>In relation to provision 7 above</u>

- Would your organisation cooperate with such a system?

> Response:
> The IAB is of the opinion that the IETF is an example of successful implementation of the WTO principles. IETF standards are used throughout the world and form a fundament of a broadly used system that thrives on interoperability: the Internet.
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> The IETF standards process is well documented and adheres to the principles as described by the WTO in G/TBT/1/rev.8. Participation is open to all, decisions are based on a documented consensus process, with a well defined mechanism for appeal, the IETF maintains liaison relationships with several other SDOs, and the resulting standards are freely available with no charge.
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> The IAB believes there will be a lot of unnecessary overhead if IETF standards would be transposed into ESO documents. Without claim to completeness, we present a few considerations:
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> - There is a risk that, even when RFCs are published with an ESO number without any modification whatsoever, there will be technical confusion. The fact that globally, and in large parts of the European ICT Industry, references to IETF Standards are made by RFC numbers, while in some European niches the references would be made indirectly through ESO identifiers will cause confusion and impose costs on the industry as the two references would need to be compared to determine whether they are technically truly the same specification. An RFC is unambiguous within Europe and all its global trading partners.

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[1] WTO/TBT – G/TBT/1/Rev.8

- IETF RFCs can be modified through an errata system and can be updated or deprecated by another RFCs. The transposition approach would suffer from additional burden to keep track of the changes and updates of the RFC series. Directly referencing the RFC series would guarantee the freshness of the source. In addition, as part of the maintenance of protocols, the IETF takes the responsibility for extensions and modifications. In that context the ability to exercise change control over the standards is an important attribute to maintain the interoperability of IETF standards. More detailed considerations regarding protocol extensions are documented in RFC 4775 (Procedures for Protocol Extensions and Variations). The only mechanism through which the IETF can currently exercise that change control is through its copyright provisions. For direct referencing the issues around copyright can all be avoided (as free reproduction and translation is allowed). However, before we can commit to transposition we would need to do further research with respect to the structure of the license that would allow that transposition while the IETF maintains the change control needed for interoperability.

- The IETF has a well defined IPR policy. Transposing IETF standards into a ESO standard might also cause transposition into another IPR regime. Any organization implementing the standard would need to assess the terms and conditions under which the standard can be used, implemented and accessed. Needless to say that causes legal overhead.

For some detailed discussion about the IETF IPR policies in the context of the Commissions White Paper we refer to the paragraph "Intellectual Property Rights" in our message from August 28, 2009 (http://www.iab.org/documents/correspondence/2009-08-28-IAB-EuroICT-Reply-final.pdf)

All in all the IAB believes that a situation in which IETF standards can be directly referenced is most favourable.

As an example of a practical implementation of this principle: ISO/IEC JTC1 has recognized the IETF as an Approved Reference Organization (ARO) so that according to its referencing policies (e ISO/IEC JTC1 Directives Annex N) IETF documents can be directly normatively referenced. This avoids individual ISO/IEC JTC1 SC's having to complete a Referencing Explanatory Report (RER), identifying IETF and the referenced standard, along with items such as maintenance responsibilities, etc.

However, in case that direct reference to IETF RFC series is not possible for whatever reason, we are willing to collaborate with the SDO performing the transposition.

- Would your organisation be prepared to sign up to and abide by the WTO/TBT code of conduct?

Response:
The IETF operates according to the WTO/TBT principles.

We observe that the code of conduct (Annex 3 of the Agreement on Technical Barriers to Trade) is not being referred to in Provision 7 but that the principles from section IX of G/TBT/1/rev8 are. We are confused as to the requirement that Provision 7 would lead to having to sign up a code of conduct.

Unfortunately the IETF is not in a good position to sign up to a code of conduct as its own policies and procedures are leading even though they de-facto adhere to the principles and the code of conduct.

The IAB would like to facilitate methods to communicate changes in the unlikely event that the IETF's policies and procedures would move away from the WTO principles so that in that case its status can be reassessed.

- What charges if any or other requirements would your organisation impose were your standardisation documents to be transposed into European standards?

Response:

> IETF RFCs are available free of charge. For the problems with transposition see above.

In relation to provision 19 above

- Would your organisation be prepared to accept standardisation mandates (requests) from the European Commission?

> Response:
> This is an matter that would need further discussion with the IETF leadership, as represented by the IAB.
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> However, as a first approach.
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> The IETF is an organization that maintains a global focus and works in a global context. When specific stakeholders bring work to the IETF the requirements, architecture and solution space will be developed within that global context using the regular -- transparent and open-- IETF procedures.
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> Within that framework the IETF can take up mandates from the European commission for instance through a liaison relation: Currently the IETF maintains liaison relations with external bodies that can request the IETF to develop a standard. In those cases the request is duly acted upon and the process to determine consensus for development is started while the result of the consensus is communicated. We are confident that the IETF, through an appropriate liaison relation, can establish a relation where mandates will be considered, decided upon, and results will be explained.

In relation to provision 23 above

- Would your organisation be likely to respond to calls for tender issued by the European Commission for the development of European standards?

> Response:
> In practice this has never happened and the IETF has not developed a model to cater for this. However, the IAB believes that if funding would be available to develop a body of work, mechanism to apply that funding to the development of a standard (within IETFs policies and procedures) will be developed.
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> This is also an issue would need more thought and deliberation from the IETF leadership.

Additional Remark:

As one of the organizations that can be considered a truly global Forum we understand the IETF is the subject of the proposed provisions. The IAB is concerned that it may not have effectively answered this questionnaire as the full set of provisions has not been made available. We therefore would like to stress that we are available to the Commission to discuss and clarify any of the issues concerning the recognition of the IETF work products. The IAB has several members that are situated in the EU (its current chair is Dutch) and can make itself available on relatively short notice.