DG Connect Workshop

Open Standards for ICT Procurement:

Sharing of Best Practices

December 3rd 2014

2: Standard “Sharing and Reusing” clauses for contracts

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“Sharing and reusing” ?

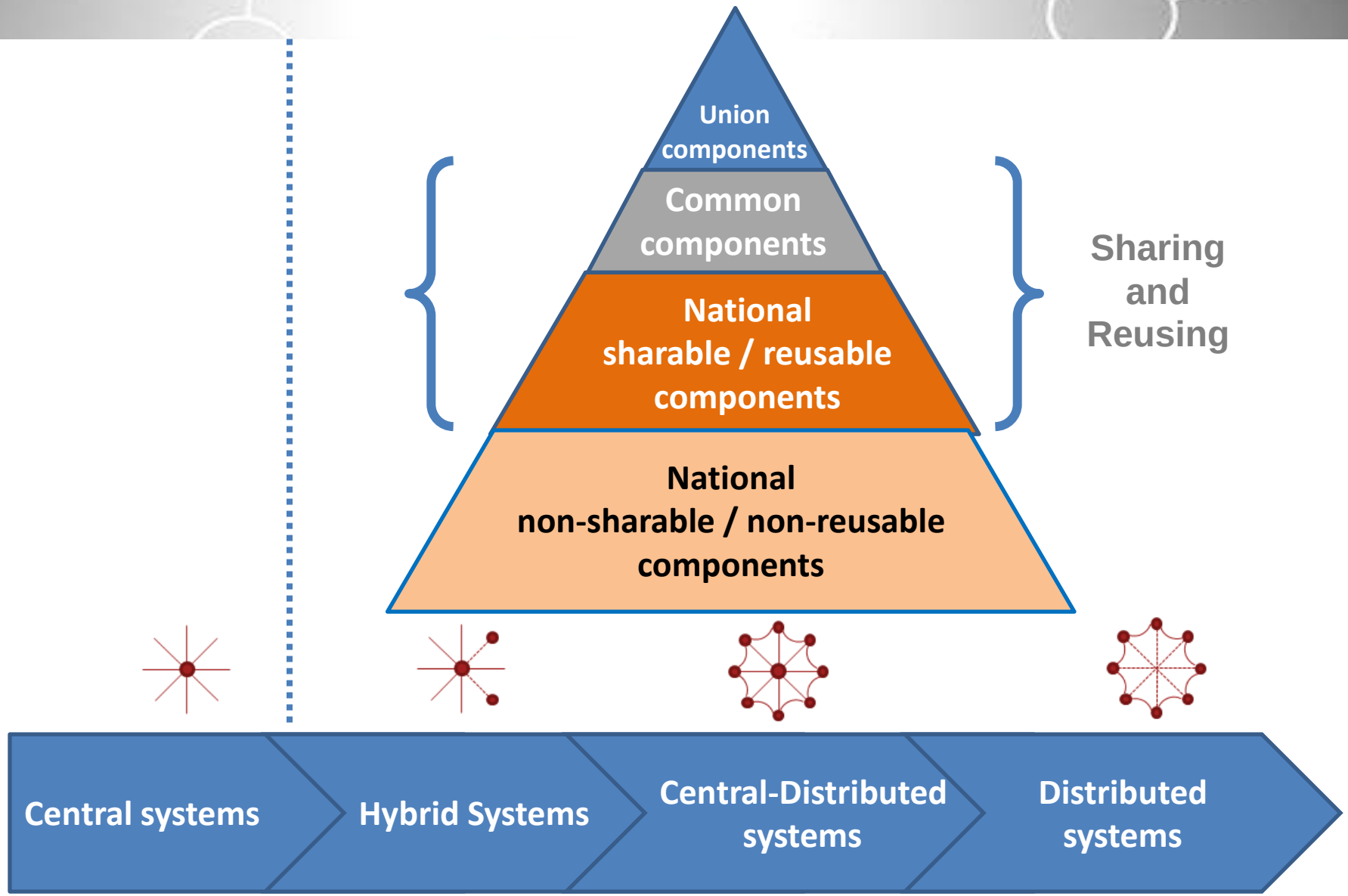
Generate higher savings when procuring ICT

Localising best practice /software developed in other Member States

Taking full advantage of the Public Procurement Directive 2014

Ensuring that Sharing and Reusing can produce full efficiency

Current approach of EU systems



Sharing and reusing scenarios

- MS1 «gives» or «sell» reusable / localisable national component to MS2, MS3, …
- MS1 is put in charge by MS2,3,4,... to develop some reusable components.
- MS1,2,3,… form a EGTC (European Grouping of Territorial Cooperation) that contracts the development of shareable components.
- Multiple additional possibilities in Procurement Directive 2014/24/EU:
    1. Accession by one or several MS to a framework contract awarded by another MS (Art 37 – 1);
    2. Launch of a new procurement contract, done together by several / all MS, based on an agreement organising e.g. the project, governance, responsibilities and budgets (art. 38 – 1);
    3. Use by a MS of the (national) central purchasing body established by another MS (art. 39 – 2.);
    4. Establishment of a common central purchasing body by several MS (art 39 – 4. & 5.)

Sharing and Reusing conditions ?

= Freedom when using the results

- Art I.9 of the EC Contract model of September 2011
  - I.9.1 Modes of exploitation
    All rights about [*works in general*] produced within the contract are vested to EU and may be used as follows:
    - Distribution, storage/archiving, modification, localisation (language), Use for own purpose or licensing to third parties
  - I.9.2 Pre-existing rights
    - To list when distributing final result
    - Provide a copy of the licence

Remaining issues ?

- Solution delivery is merging/integrating adapting multiple components making the whole « application X »
- Pre-existing rights (licences) of all components are indentified and transferred to the Contracting Authority (CA), but what about distributing/sharing/reusing the application « as a whole »?
  - Can the CA apply the licence of its choice?
  - Can the CA apply any Licence (in case of incompatibility)?
  - Can the CA get support from a F/OSS Community?
  - Will the contractor assist/support this community?
  - What guarantees against locking?

Licence compatibility

- **Free/Open Cource** and **Proprietary-Non-free** licences are (most probably) not compatible.
- There are more than **60 licences** that are « officially » Open source.

- **Copyleft** open source licences are (often) not compatible
- For example – according to the FSF (Free Software Fundation) – about 40 licences (or licence versions) are open source, but are **not compatible** with the GPL
  http://www.gnu.org/licenses/license-list.en.html#GPLIncompatibleLicenses
- Incompatibility does not limit internal use, but makes sharing/reusing (under any licence) problematic/uncertain.

“Sharing and Reusing” clauses

Objective of EC - ISA action

- Holistic approach to cross border sharing and reuse (public administrations assets).
- Common strategy regarding legal instruments (clauses)
- Quick wins: obtain a significant positive impact with little effort

Taking advantage of previous works

- Guideline of public procurement of OSS
- Guide for the procurement of standard-based ICT
- Joinup.eu experience and studies
- EC licensing practice
  (the multilingual European Union Public Licence - EUPL)

Scenarios

PA writes and distribute its own software

- With internal or external resources (contractor)

PA reuses existing third party software

- For integration in PA solutions

PA migrates from solution A to solution B

- And wants to avoid « vendor locking »

The use/reuse of « non-software » assets:

- Standards
- Semantic assets (taxonomies, thesauri)

Community building

- OSS is not « only » a licensing model, but (also) a development model

Distributing the Application

As a whole…

The supplier will grant that the purchasing authority has the right to distribute the delivered application under the European Union Public Licence (EUPLv1.1 or later) or any licence(s) providing the rights stated in the article 2 of the EUPL.

A **world-wide**, **royalty-free**, **non-exclusive**, **sub-licensable** licence to :

- use the Work in any circumstance and for all usage,
- reproduce the Work,
- modify the Original Work, and make Derivative Works based upon the Work,
- communicate to the public, including the right to make available or display the Work or copies thereof to the public and perform publicly, as the case may be, the Work,
- distribute the Work or copies thereof,
- lend and rent the Work or copies thereof,
- sub-license rights in the Work or copies thereof.

Why a reference to the EUPL?

- A European legal instrument for licensing copyrighted works
- Published by the EC and conform to EU law
- Law of the licensor is applicable (EU Member State)
- Under authority of the Court of Justice EU
- The licence has a working value in all EU language
- Contracting authority receives the most extended rigths – the provider may also reuse it…
- **If not the EUPL, any other licence providing the same rights**

Facilitating developers' communities

When applicable…

OSS is as much a development model than a licensing model. A "Community" must be organised / supported

In its proposal, the supplier will detail how it will:

- *Organise, animate and support a long term developers community in order to bring new developments, corrections and improvements to the delivered software or solution;*
- *Encourage contributions (to the software or solution) from the public authority itself, from its own staff and from third parties;*
- *Organise technically and legally the collaborative work of the community;*
- *Combine its own software guarantee – if any – with the work provided by this developers community;*

IPR assets coverage

Copyright, marks, names, logos, Web domains, documentation, data, manuals, documentation

The ownership of all copyright, trademarks, trade names, patents, and all other intellectual property rights ("IPR") specifically developed and implemented in the provided system or solution: graphics, website layout, surface content, logos and devices, and the rights to the domain name(s), manuals, training materials or presentations, shall be transferred and remain vested to the contracting authority.

At the sole exception of IPR licensed to the contracting authority under licence(s) providing the rights stated in the article 2 of the EUPL, The contracting authority, as the acknowledged owner, shall be and remain the sole owner of all IPR in all data, material, documentation or information inputted, loaded or placed onto the provided system or solution in any manner, reports generated by or from the system, material or documentation placed on the system, outputs, and end-products.

The successful tenderer will be required to indemnify the contracting authority against third party claims relating to the awarding authority use, re-use, re-distribution or licensing of any part of the provided system or solution (software, hardware or intellectual property).

Open and Royalty Free standards

Implemented standards, interfaces, protocols, formats, semantic assets (i.e. taxonomies) should be:

- *Implementable by all potential providers of equivalent technologies.*
- *The past and future development of the standard is open and transparent.*
- *Reusable without restrictions and royalty free in the framework of a distribution providing the rights stated in the article 2 of the EUPL v1.1 or later.*

Anti “Vendor Locking” clause

Vendor must indemnify for the “cost of locking”

All standards, interfaces, protocols, formats or semantic assets implemented by the supplied solution and required for the full use of all data created or maintained using the supplied solution during the lifetime must be made available to providers of equivalent technologies who may be awarded a subsequent contract, with no additional costs.

Any costs resulting from the lack of availability, licence restrictions or royalties related to these standards, interfaces, protocols, formats or semantic assets shall be borne by the provider of the supplied solution.

Such costs may be minimized by ensuring that the supplied solution uses only standards, interfaces, protocols or formats that:

- *are implementable by all potential providers of equivalent technologies;*
- *are developed through an open and transparent process;*
- *can be reused without restrictions and royalty free in the framework of a distribution providing the rights stated in the article 2 of the EUPL.*

URL of the ISA “sharing and reusing clauses”

https://joinup.ec.europa.eu/elibrary/document/standard-sharing-and-re-using-clauses-contracts

Thank you for your attention

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TRASYS
WE GET IT DONE

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