

MoU BIBA

The signatories to this Memorandum of Understanding ("MoU") have met and discussed means to insemminate, promote and/or enhance initiatives in the field of Broadband applications and, through those discussions, have concluded that achieving this goal is best served by bundling forces in a Belgium Internet Broadband Applications ("BIBA").

It is envisaged by the signatories, that the creation of BIBA should reflect the principles as set forth herein below.

The Charter of BIBA

BIBA should be:

- A catalyst, in a sense that the value of BIBA should be higher than the sum of the value of each individual member and should accelerate the process of implementing new ideas or solutions;
- An advocacy for Broadband Applications, this means BIBA should act much like other federations in order to influence the Belgian politics at the federal and regional levels;
- A single point of contact between the members and the 'outside world', in both directions in matters that concern BIBA in general (excluding the individual projects and the daily activities of the members);
- As much as possible 'politically colorless', this means as much as possible independent of a ministry;
- A stimulator and initiator to new projects, by facilitating the deployment of easy developable and reproducible applications on broadband which can be offered to the market of SME's and home-users, and by enhanced cooperation between companies;
- An environment where service companies which can deploy services on a broadband network can find each other to learn from each other or can find partners to collaborate within a project.

BIBA needs to be an attractive mix of thinking and acting. First emphasis needs to be on acting (BIBA-projects) as the broadband infrastructure badly needs applications. However, the BIBA-platform should never loose sight on the way ahead. What do technologies offer in the near future? What will be possible that is not today? Key to have a lasting effect of this platform, is to have the applications evolve along with technology or even to anticipate its coming.

Protection of the members

Therefore BIBA should create a protective environment for members to initiate projects and engage in collaborative efforts in order to allow each member to offer as much as he or she can. This protective environment should encompass:

- A pre-set, well defined co-development framework that strictly within the boundaries of competition law and within the overall aim to enhance the broadband applications market, allows various parties to co-operate in projects,

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- Clear principles in respect of Protection of Intellectual Property Rights (MoU does not result in the transfer of any title to property or intellectual property right as between parties) on solutions proposed,
- A general Non Disclosure Agreement to protect the Confidentiality within BIBA-projects,
- Clearly regulated ownership of results,
- The setting up of a collaboration format qualifying for European subsidizing (consortium, JV's, ...),
- Creation of a commercialization model reflecting the efforts of each participant,
- Etc....

Such protection should be organized within the different projects between the different members of such projects. In this way competition between different projects is not excluded and it allows the free competition within the projects as in the market.

Each Party will continue to act as an independent contractor. No agency, joint venture or other joint marketing relationship is created by or within the MoU. BIBA will not promote any individual product by name, but it can promote the use of a type of service or product what will result in promoting broadband and broadband applications.

Membership of BIBA does not encompass an obligation to have all projects developed within BIBA. Members will at all times have the option to continue or to engage in projects outside BIBA, both on an individual or co-operative basis. However, in the event that one or more members of BIBA decide to use BIBA as a framework for a project, such member(s) will be expected to comply with the protective framework offered by BIBA and the negotiated rules within the projects (e.g. NDA).

The BIBA - entity

In order to put the principles as set forth herein to practice, it is acknowledged that the signatories will have to determine whether BIBA should evolve into a legal entity, and what kind of legal entity that should be.

So as to ensure that swift progress can be made in this particular field, the signatories have a representative of each of them on the pre-constitutive board of BIBA (the "Preparatory Board"), with as a minimum the following agenda:

- Establish an internal procedure for the Preparatory Board to take decisions;
- Decide on the question whether BIBA should be a legal body and if so, which structure should fit the best;
- If the outcome on the former item on the agenda is positive, decide on the actual legal framework to apply and on a milestone plan towards incorporation of such legal entity, ensuring a way forward for editing and agreeing on articles of association, establishing conditions for adherence of members to BIBA, ensuring compliance with legal and administrative requirements, etc....
- Give mandate to a workgroup to draw out the working principles of BIBA by May 16 at the latest. The working principles will reflect the spirit of this MoU and allow its optimal execution. The workgroup delivers a monthly progress report to the Preparatory Board. Upon acceptance of the final draft of these principles by at least 2/3 of the members of the Preparatory Board, these

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working principles will be included in the MoU and the workgroup will be dissolved.

The members of the "Preparatory Board" are: (list with members who did confirm their endorsement.)

Venue of the meeting shall be the Cabinet of the Minister of Telecommunications, avenue de la Toison d'Or 87, B-1060 Brussels

Internal Communication

BIBA shall use English as the standard language for all internal communications, save where the law or regulations require another language to be used. Parties will contribute to the setting up of a proper framework for BIBA to communicate electronically, allowing optimal contacts between the members of Project- and Working Groups for the purposes of BIBA.

External Communication

The external communication will be coordinated by the secretariat, and will at all times reflect an independent view concerning the promotion of broadband internet applications in general. Never shall this platform express ideas that could be biased towards some particular technology or company.

Financial support

Financial support should be provided for the BIBA-platform as well as for the BIBA-projects.

For The BIBA-platform:

Financial support might be required to sustain the BIBA-initiative and may be provided by public institutions (international, federal or regional) and through membership fees. The height of the fees depends on a qualification of the members, the budgets and a funding scheme that are proposed by the Board and accepted by the members. The Board submits a financial status to the members on a regular basis.

For the BIBA-projects:

The BIBA-platform shall support the members with looking for funding for the projects that are qualified as a BIBA-project. It is envisaged that some of these projects will benefit of European, federal or regional funding programs as well as funding by the participants in the project. Though the finances are governed within the project, a quarterly status report will be delivered to the Board and financial statements whenever institutional funding is provided to that project.

Recommendation

In order to underscore the government's lasting commitment towards the expansion of broadband applications, the Preparatory Board recommends to include the BIBA initiative in the next governmental declaration.

Disclaimer

It is hereby clearly understood by the signatories that the above mentioned principles shall have legal value and be binding upon them only if and when signatories hereto agree to establish a contractual arrangement along said principles and provided that such principles comply with the provisions of applicable law, including but not limited to competition law. In the event that the principles above, or even one of them, would not be confirmed in a contract or if the signatories hereto decide not to conclude any contract at all, none of the signatories shall have the right to claim damages from any other signatory hereto for direct or indirect losses related thereto. Moreover, the signatories hereto explicitly and irrevocably agree to waive the right to initiate any legal action before court or arbitration bodies with regard to the non- or the partial execution of this Memorandum of Understanding.

In witness whereof, signatories hereto have signed this Memorandum of Understanding in Brussels on 2003 by their representatives in ... (..) original copies.