EUPL

European Union Public Licence

v.1.1

Guidelines for Users and Developers

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Content

HOW TO USE THE EUPL?

Guidelines for users and developers

1. What are these guidelines for?

These Practical Guidelines will provide information on:

- how to use software distributed under the "European Union Public Licence" (EUPL) in its last v. 1.1 release, and

- how to use this licence to distribute your own software.

While it may answer to the question "What is the EUPL?", it will in priority investigate how far it can be useful to you, depending on your role: software owner, author (licensor) or user.

Sharing software, which is a fundamental principle of "Free or Open Source software" (F/OSS), is one of the most efficient ways of increasing its use, reinforcing its quality (allowing other developers to check, improve or increase functionalities) and saving costs by avoiding reinventing the wheel.

Such sharing was unanimously recommended to public administrations by the European ministers responsible for eGovernment policy[1.]

However, when someone writes software, the writer creates property. If the writer is an employee or an official of a public administration, it is likely that this administration will own the software created. If the writer is a contractor of the public administration, it is likely that the service contract provides full ownership, including the exercise of all rights attached to copyright, to this administration (this point needs to be checked by screening each specific service contract between the administration and its software provider). Computer software is protected by copyright law. Copyright law gives the owner of a work certain rights over it, and makes it illegal for others to use or to adapt the work as if it were theirs – without a specific permission or "Licence".

Therefore, to facilitate the sharing, the reuse and the improvement of software, the European Commission has created the EUPL with the aim of protecting both the interest of the authors (by preserving their copyright and avoiding that their work could be appropriated by a third party) and the users (by providing them all the rights that are granted by F/OSS licences: use, modification and re-distribution).

The creation of the EUPL was the outcome of a unique process. No public administration of the size of the European Commission has previously ever published an F/OSS licence, or determined to use an F/OSS licence in a systematic way. This licence is the outcome of three years of study and analysis of several existing F/OSS licences, which had determined that there were still needs unmet by existing licences. Three

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Ministerial Declaration approved unanimously on 24 November 2005 in Manchester, United Kingdom (http://archive.cabinetoffice.gov.uk/egov2005conference/documents/proceedings/pdf/051124declaration.pdf).

legal advises were delivered. A public forum and an international lawyers' conference were organised by the European Commission. The EUPL v.1.0 was finally approved by the European Commission in January 2007 (in English, French and German). This Decision of the European Commission, a second Decision in January 2008 (approving the EUPL v.1.0 in 19 other European languages) and a third Decision of January 2009 introducing some clarifications to the licence text in all linguistic versions (EUPL v.1.1) are linked to the following motivation:

- The EUPL had to be legally valid in all the official languages of the European Union, in respect of the principle of linguistic diversity, as recognized by the Charter of Fundamental Rights of the European Union;
- The EUPL had to consider the specificity and diversity of Member States Law and the Community Law (copyright terminology, information, warranty, liability, applicable law and jurisdiction);
- The EUPL would ensure downstream compatibility issues with the most relevant other licences.

The EUPL is a "legal tool" that is already used by the European Commission to distribute software and that can be also used by many other software providers, including public administrations from Member States of the European Union.

The purpose of these guidelines is to provide you – depending on your role – clarifications and concrete answers to possible questions you may have when using the EUPL to distribute software or to use software that is licensed to you under the EUPL.

2. Who should read these guidelines?

The guidelines are intended for those who:

- wish to use software that has been published under the EUPL;
- own rights to software and are considering the EUPL as the licence of choice for its distribution;
- are starting to develop software, might integrate the EUPL licensed software and want to release the product under the EUPL or another F/OSS licence.

The guidelines are targeted to the following stakeholders:

- Services of the European Commission, when taking the decision to distribute software they own under an F/OSS licence;
- Public sector authorities when deciding to use the EUPL to distribute their own software as F/OSS;
- All other stakeholders wanting to use the EUPL to distribute their works: including private sector enterprises or individual authors. Although especially adapted to the European legal framework, the EUPL can also be used by authors located outside the European Union;
- All developers or users (bodies or natural persons), which are potential users of a EUPL licensed work.

3. Using software licensed under the EUPL

3.1. Understanding Licensing principles

When someone writes software, the resulting intellectual property is protected by copyright law, just like a literary or artistic work.

Copyright law gives the owner of a work certain rights over it, and places legal limits on how others can use the work. Copyright originates in the protection of written works, and it can be helpful to remember that computer software and its associated materials are treated by copyright law as species of literary work.

Owning the copyright in a piece of work, whether a book or software, means that the owner, usually the original authors or their employer, decides who can copy it, adapt it and distribute it. By default, only the owner can do that. Anyone who copies, changes or distributes someone else's work without permission can be subject to legal action.

Permission to copy, change, or distribute a work can be granted by the owner to others through a licence, such as the EUPL.

Such a licence (as the EUPL is) would be considered as a contract between a **Licensor** (the author of the software) and a **Licensee** (you, the user of the software, who can then use it according to the licence terms). Note that if you do not agree to the licence terms, you normally do not have the right to use, copy, change or distribute the software. If you do this without agreeing to the licence terms, you are violating copyright law.

3.2 Understanding F/OSS principles

The EUPL v1.1 is a Free/Libre/Open Source Software (F/OSS) licence. It has been certified in March 2009 as an open source licence by the OSI - Open Source Initiative - as it meets the terms of the Open Source Definition (OSD). The licence meets also the conditions expressed by the Free Software Foundation (FSF) which can together be summarised as ensuring four main freedoms to the licensee:

- Freedom to use or run it for any purpose and any number of users;
- Freedom to obtain the Source Code (in order to study how the software works);
- Freedom to share, to redistribute copies of the software;

- Freedom to modify, adapt, improve the software according to specific needs and to share these modifications.

The Open Source Initiative (OSI)
(see: www.opensource.org/docs/definition.php)
has established ten OSD principles that any "Open Source" licence must comply with:

Free redistribution

"The licence shall not restrict any party from selling or giving away the software as a component of an aggregate software distribution containing programs from several different sources. The licence shall not require a royalty or other fee for such sale."

Communication of the source code

"The program must include source code, and must allow distribution in source code as well as

compiled form. Where some form of a product is not distributed with source code, there must be a well-publicized means of obtaining the source code for no more than a reasonable reproduction cost preferably, downloading via the Internet without charge. The source code must be the preferred form in which a programmer would modify the program. Deliberately obfuscated source code is not allowed. Intermediate forms such as the output of a pre-processor or translator are not allowed."

Authorisation to produce and distribute derived works

"The licence must allow modifications and derived works, and must allow them to be distributed under the same terms as the licence of the original software."

Regulation concerning the integrity of the author's source code

"The licence may restrict source-code from being distributed in modified form only if the licence allows the distribution of "patch files" with the source code for the purpose of modifying the program at build time. The licence must explicitly permit distribution of software built from modified source code. The licence may require derived works to carry a different name or version number from the original software."

This is because encouraging lots of improvement is a good thing, but users have a right to know who is responsible for the software they are using. Authors and maintainers have reciprocal right to know what they're being asked to support and protect their reputations. The licence may impose that changes or improvements should be distinguished from the original source.

No discrimination against persons or groups

"The licence must not discriminate against any person or group of persons."

It may be that some countries have export restrictions (embargoes) for certain types of software; however the licence itself may not incorporate such restrictions.

No discrimination against fields of endeavour

"The licence must not restrict anyone from making use of the program in a specific field of endeavor. For example, it may not restrict the program from being used in a business (commercially), or from being used for genetic research."

No "additional" restrictions regarding the distribution of licences

"The rights attached to the program must apply to all to whom the program is redistributed without the need for execution of an additional licence by those parties."

This is intended to forbid closing up software by indirect means such as requiring a non-disclosure agreement.

Licence must not be specific to a product

"The rights attached to the program must not depend on the program's being part of a particular software distribution. If the program is extracted from that distribution and used or distributed within the terms of the program's licence, all parties to whom the program is redistributed should have the same rights as those that are granted in conjunction with the original software distribution."

Licence must not restrict other software

"The licence must not place restrictions on other software that is distributed along with the licensed software. For example, the licence must not insist that all other programs distributed on the same medium must be open-source software."

Licence must be technology-neutral

"No provision of the licence may be predicated on any individual technology or style of interface."

Internet is currently not the sole software distribution channel (they are others like CD-Rom, FTP etc.) They may be also future channels (that are still to be invented) and the licence can not be exclusive of (or linked to) any specific technology.

3.3 Using EUPL-licenced code: your rights and obligations

3.3.1 Your rights are defined in Article 2 of the EUPL:

By "receiving" a "Work" (software and/or documentation) under the EUPL licence, you will receive a series of world-wide, permanent, royalty-free, and non-exclusive rights.

"*World wide*" means that your rights are not restricted regarding the space: you can use the licensed work in Europe or outside Europe, or via an international communication network.

"*Permanent*" means that your rights are not restricted in time. Provide you continue to comply with licence terms, rights are given forever, the licensor will not withdraw the licence.

"*Royalty free*" means that the licence itself is provided to you at no cost. They may be optional fees related to complementary services such as support (specific maintenance).

In general with a F/OSS licence, and specifically with the EUPL, as a licensee you have the ability to:

- Obtain the source code from a free access repository. It is not said that this is a "Web repository" (as the licence is neutral regarding the technology), however publishing the code on the Internet corresponds to current best practices.
- Use the Work (meaning the software) in any circumstance and for all usage. This means, for example, that both private and public uses, non-profit or for-profit uses are allowed.
- Reproduce the Work. This means making copies.
- Modify the Original Work, and make Derivative Works. This means that you may adapt the code to your specific needs, include the software in a broader solution or at the contrary extract from the code only the parts that may be useful to you.
- Communicate it to the public (i.e. using it through a public network or distributing services based on the Work – "Software as a Service" via the Internet)
- Distribute the Work or copies thereof. You have also the right to distribute modified version of the Work or Derivative Works as stated above.
- Lend and rent the Work or copies thereof.
- Sub-licence rights in the Work or copies thereof, meaning that you will distribute under the conditions of a Licence (the EUPL according to the "copyleft" clause) and sub-licence all the rights that were given to you according to the EUPL to new stakeholders.

3.3.2 Your obligations are defined in Article 5 and 6 of the EUPL:

For using the software

If you are a simple user of the software "as it was obtained or downloaded" without modifying the source code, and for your own benefit or the benefit of your organisation (the same administration, the sale legal body) without distributing or communicating the software to third parties, there are no specific obligation or limitations to the rights that are granted to you.

By using the software, you will avoid all unauthorised use of the previous authors' intellectual property: names, logos, trademarks, service marks etc. For example, you may use "CIRCA" (a software licensed under the EUPL by the European Commission) to share information with remote users in the framework of your own services or project, however the fact of using CIRCA does not authorise you to use the name (or the logo) of the European Commission for advertisement purpose or to say that your activity is supported, facilitated or sponsored by the European Commission.

For licensing the software as original author

If you are the first person taking the decision of licensing the work (the "original author" or first licensor), you have to ensure (and you provide via the licence a formal warranty) that the copyright is owned by you, or was previously licensed to you.

For example, if your public sector administration wants to license some software, check that the software developers are or were employees of this administration or were contractors (working for you through a service contract transferring all rights to your administration). The formal warranty above (see Article 6 of the EUPL) is provided by inserting prominent copyright notices in the software code (with indication of the name of the copyright holder).

The first licensor can also include in the work specific pieces of software code that are licensed to him/her under a permissive (or "non-copyleft") licence: a licence which, like the "New BSD", the "Apache 2.0" or the "MIT Licence", tolerates the redistribution of licensed code under another licence: the EUPL. In such case, please check carefully the provisions of the "permissive" licence, in particular all clauses related to the conditions or re-distribution and to the respect of existing copyright marks.

For modifying the software

If you receive EUPL licensed software and want to edit the code for any reason, you have to respect the copyright of the original author (i.e. the European Community), and of subsequent contributors (in any) in particular all mentions related to it. Therefore, do not remove any copyright marks if they are present in the source code that is used for writing your derivative work.

If you make yourself some improvements, indicate clearly the beginning and the end of such improvements, insert the date where the modification has been done and your own copyright mark, identifying you clearly as the author and copyright owner of the modification. Please do this as soon as any modification is done, even if you have no intention to re-distribute the software (as a contrary decision could be taken in the future by your organisation). If you plan to re-distribute the software after modification or improvement, do not forget that the EUPL (Article 6) asks to every contributor one formal guarantee: that the

copyright of inserted code is owned by you or was licensed to you with the permission to re-distribute it.

For re-distributing the software

What is "Distribution"

According to the EUPL definitions, *Distribution* and/or *Communication* (to the public) are any act of selling, giving, lending, renting, distributing, communicating, transmitting, or otherwise making available, on-line or off-line, copies of the Work or providing access to its essential functionalities. The definition is very large and covers more than just providing "copies" of the software. Someone who, as Internet service provider for example (Software as a Service), allows on-line users to work with the software, is "communicating to the public".

Does it mean that all Internet Service Providers (ISPs), which may just be *"using as is"* (without making any derivative work) standard F/OSS components (licensed under the EUPL) have to comply with the distributor's obligations (especially concerning the provision of a repository where the source code of the software will be available)? No, this would just create burden and is not the objective of the licence. This objective is to protect all users' rights (and in particular those of the original author and subsequent contributors) if ISPs deliver their services based on Derivative Works that no other repository is distributing and licensing. In such cases only, the ISP must comply with distributor's obligations.

What if you "Distribute"

For redistributing the software to third parties, you have to consider two obligations, concerning the use of the licence and concerning the provision of a repository where the source code of the software will be available.

A) Obligation concerning the licence

If you distribute copies of the program that was licensed to you under the EUPL, you must always provide these copies under the provision of the EUPL.

If you have created a derivative work (meaning that you have modified the software, added functionalities, translated the interface in another

language etc.), and if you distribute this new work, you must also apply the same EUPL licence (without modifying the licence terms) to the whole derivative work.

The EUPL foresees an important exception to the above rule: it is the case where the use of a compatible copyleft licence is compulsory.

A Software Licence is said *"Copyleft"* when re-distribution of the original code or of the result of any merger with the code must be licensed under this unmodified licence.

The GNU General Public Licence (GPLv.2) is the most used copyleft licence.

According to its article 5, the EUPL is also copyleft in order to avoid any exclusive appropriation of the software.

From the EUPL point of view, there are compatible copyleft licences listed as follows: (1st February 2009):

- the GNU General Public Licence (GPLv.2)
- the Open Software Licence (OSL) v. 2.1 and/or v. 3.0

- the Common Public Licence v. 1.0
- the Eclipse Public Licence v 1.0
- The CeCILL v. 2.0

What does this mean?

Imagine that you have merged together two pieces of software code:

- the first piece of code was licensed to you under the EUPL;
- the second piece of code was licensed to you under one of the above compatible copyleft licences (for example the GPLv2).

If you decide to re-distribute the derivative work, you will re-distribute this work under the provision of the GPLv2. This is an obligation resulting from the GPLv2, which is "copyleft". The EUPL solves the "conflict of licences" by authorising you to comply with such an obligation.

Figure 2: Compatibility clause

Please note that, when building software solutions from various Open Source components, it is rarely compulsory to merge or link their code in a single source. In general, the various components of the solution will exchange and process parameters without being merged. In

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How to use the EUPL   *p.9*

such case, each component of the solution can stay licensed under its original licence.

Imagine a second case where you have merged together two other pieces of software code:

- the first one was licensed to you under the EUPL;
- the second one was licensed to you under a **"permissive"** licence

A software licence is said *"permissive"* when re-distribution of the original code or of the result of any merger with the code may be licensed under any licence (the same or another, including a "*proprietary*" licence (where the vendor reserves all copyright for himself). Well-known example of permissive licences include the MIT licence and the family of BSD licences.

If you decide to re-distribute the derivative work, you will re-distribute this work under the provision of the EUPL. This is an obligation resulting from the article 5 of the EUPL ("copyleft" clause).
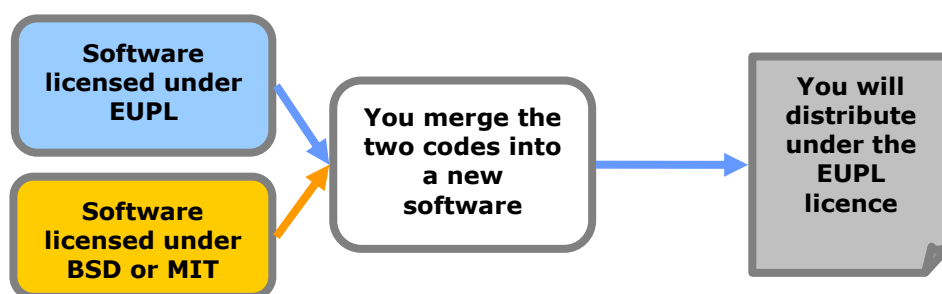

Figure 3: Merging with permissive source code

b) Obligation concerning the publication of the source code

In case of distribution of a derivative work, you have to communicate the modified source code from a free access repository (in most cases, it will be a Web site or an FTP address). You must at least provide a link or an address allowing any licensee to open this repository and access or download the source code, as long you continue to distribute the work.

3.4   What can you expect from a EUPL licensed software?

As the (original) author, or as contributor to the improvement of an existing EUPL licensed work, you can expect that your copyright will be protected, because the EUPL requires licensees to

- Respect the copyright of the original author (and of subsequent contributors if any) in particular all mentions related to it.

As the author, or as contributor to the improvement of an existing EUPL licensed work, you can expect that your work will never be appropriated by a third party (e.g. a software vendor making it his property) because the EUPL requires licensees to:

- Apply the EUPL licence in case of distribution of copies or of derivative works[2].

As the author, or as contributor to the improvement of an existing EUPL licensed work, you can expect to be informed of any redistribution. There is no formal obligation (or "guarantee") to inform the original author (or to be informed i.e. in the case of improvement). However as long as author or contributor, you will stay active and participate to the "community of people working with the licensed software", to developments or simply to forums related to the licensed work (i.e. on the selected

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[2] Except in the case of a compatible copyleft licence, which also prevents appropriation by third parties, as explained in section 5..5

collaborative development environment) you will stay in the loop and obtain feedback. This will ensure you with the right to access the modified code and to benefit from improvements for your own needs, because the EUPL mandates that:

- In case of distribution of a derivative work, the re-distributor has the obligation to communicate the modified source code from a free access repository.

As the author, or as contributor to the improvement of an existing EUPL licensed work, you can expect that your intellectual property (names, logos, trademarks, service

marks etc.) will be respected, as the EUPL mandate all users (or re-distributors) to avoid all unauthorised use of the previous authors intellectual property.

Last, as user of software licensed under the EUPL, you have a warranty of sustainability concerning the licensing of the code, as no withdrawal from the EUPL is possible: even if the original author may decide to apply other licensing terms to further versions of its original source code, what has been licensed to you is given without time limits.

3.5 Warranties, liability, applicable law

As a user of software licensed under the EUPL, you receive no warranties regarding the quality of the software, and the distributor of the software disclaims all liability with regards to any damage caused by the software - to the extent permissible by applicable law.

This means that, according to the terms of the licence, and outside exceptional cases (wilful misconduct or damages caused to natural persons) the licensor will in no event be liable for any direct or indirect, material or moral, damages of any kind. This excludes claims for loss of data, loss of goodwill, work stoppage, computer failure, loss of business opportunities etc.

Example:

I have downloaded the "X-F/OSS" solution (fictive name) licensed under the EUPL and have stored my precious files on it: all my customers and mail exchanges with them for more than three years. Suddenly, my X-F/OSS server stops working and all data are lost – I have no back-up or only "X-F/OSS format back-ups" that are un-readable and reproduce the error. If this would be the case, I can not claim for damages because of a liability of the author of "X-F/OSS".

The disclaimer of liability is never absolute: the licensor may be liable under statutory product liability laws as far such laws apply to the work. The applicable law is the national law of a specific Member State (it is the law of the European Union country where the licensor

resides or has its registered office). Some of the national laws are indeed more demanding concerning product liability.

Therefore, the EUPL licence (as any other licence, F/OSS or proprietary) will not restrict a court for establishing a "product liability" based on general consumer protection principles.

The EUPL licence itself foresees cases where the author would be liable: the case of wilful misconduct (for example the author has included a malicious computer virus in the software) or if the software causes direct damages to persons or to goods (for example, the software is a specific navigation system for aircraft and it causes a crash, the software measures the temperature for medicine instruments sterilisation and incorrect calculation causes a contamination, the software regulates the atmosphere of a local and it causes some intoxication). However, these are extreme cases for which appropriate certification bodies may check the software and certify it for the proposed usage. In all other circumstances, the EUPL should protect the author against claims resulting from indirect damages: losses of data, of time, of image, of business opportunities etc.

Moreover, software distributed under the EUPL does contain a specific warranty that the copyright to the software belongs to the licensor, i.e. the licensor has the right to distribute the software to you under the EUPL. This warranty is important for both the licensor and the licensee. For the licensors (in case they are the original authors) this is a reminder that they have

to ensure that they have copyright prior to license the software. For later contributors that re-distribute the software, this is a reminder that they have to ensure that they have the copyright on all modifications they have made. For the licensee (the end user), this is a better warranty against the risk of copyright infringement claims and even in the case of patent claims: they can check which part of the software code is questioned and request clarification from the author.

The exclusion of warranties and liability is in fact common to all software licences (Free/Open Source or proprietary). However, the exclusion finds more justification in the case of an Open Source application, which was given and not sold, which is a work in progress, which may be continuously improved by numerous contributors.

Last, if you require the guarantee of a support or any kind of service level agreement (SLA) defining the quality, frequency, reactivity and price of specific provided services, you can enter into service contracts or other agreements with organisations or companies supporting the EUPL software that you use, who may provide warranties and liability coverage, very likely for a fee.

3.6   Further development and use with other software

You can use EUPL software in combination with any other software without restriction. However, if you wish to further distribute the EUPL software you received, including the possible improvements that you have done, you must do so using the EUPL licence itself or a compatible licence.

If you wish to change the EUPL software or combine it with other software in order to make a new ("derivative") software, you need to follow the terms of the EUPL for developing or integrating software. (see chapter 4).

3.7   Is the EUPL modifiable?

Another question is whether the licence might be modified by a user, e.g. "Can I create a derivative licence?". The answer is clearly negative: the EUPL is an official document, approved by the European Commission after years of consultations and preparation. You should not modify it or create your own "EUPL derivative" and call it EUPL, "EUPL v. 2", "EUPL plus" or anything similar.

The EUPL licence is copyrighted (© the European Community 2007) and is not itself a "licensed work" that could freely be modified. According to Article 5 ("copyleft" clause), the use of the EUPL is only allowed for distribution and/or communication of works "under the terms of this Licence" (meaning without modification of the licence provisions).

Of course, it is possible to complement the licence by another agreement related to services:

integration, implementation, support, extended warranty, maintenance etc. However, as it is said in Article 5, the additional terms or conditions should not alter or restrict the terms of the EUPL licence.

If the EUPL does not fit with your needs, you may consult the list of OSI certified licences in order to check if another widely used existing licence could better fit with your needs or with the needs of your developers' community. You can also create your own licence, but be aware that this exercise should be reserved to specialists. In such case, even if some of the ideas of the EUPL may inspire your work, nothing in your new original licence should cause any confusion with the EUPL, by reproducing its name, its copyright attribution to the European Community, its formal organisation or its wording.

4. Releasing your own software under the EUPL

The EUPL is intended to ease the distribution of software that you own, following F/OSS principles.

4.1 Pre-requisites

The most important pre-requisite for releasing software under the EUPL, as with the release of any software, is to make sure that you own the rights of the software.

You need to be aware of the terms under which you will release the software, so you should familiarise yourself with the EUPL.

The EUPL is a F/OSS licence. While the EUPL itself contains all the licence terms that you will use, familiarity with the F/OSS concepts is useful in order to make the most of the advantages of releasing software under the EUPL. In particular, it is helpful to understand the community building F/OSS principles.

4.2 Check ownership and IPR on your own software

If the software you wish to release was entirely written by you (or your organisation, i.e. the legal entity that will release the software), then you own the copyright to the software. In any other situation, you need to check who wrote the software and under what terms you are allowed to use and distribute it.

If the software was written for you by contractors, you may have the right to re-use and re-distribute it, or you may even own the software - this depends on the terms of the contract under which the software was written for you. You should therefore find this contract and check its Intellectual Property Rights (IPR) provisions. For example, if you are contracting with the company X (the "Contractor"), check if your contract contains a provision like this one:

"Ownership of the results – intellectual and industrial property"

Any results or rights thereon, including copyright and other intellectual or industrial property right, obtained in performance of the Contract, shall be owned solely by < THE CONTRACTING AUTHORITY >, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation."

In new contracts, it is recommended to focus attention of the contractor on your intention to distribute the work under the EUPL. Indeed, developers today use a growing number of Open Source or even "Public Domain" components and they should check if the licence of these components is permissive enough to allow you to distribute your software under the EUPL. It is therefore recommended to complement the above provision with the following:

"Where industrial or intellectual property rights exist prior to the Contract being entered into (as it may be the case if the Contractor integrates Open Source software components in the delivered work), the Contractor will check and ensure that the whole delivered work can be transferred, distributed of communicated under the provision of the European Union Public Licence (EUPL). Exceptions to the above requirement are possible only after prior approval of <THE CONTRACTING AUTHORITY>. "

4.3 Applying F/OSS principles (community building)

Of course, you can release software under the EUPL simply to make it easy for others to use it, in which case you may not be interested in the growth of a supporting community of "volunteer developers" outside your own organisation. However, if you want to make the most of the community advantages of Open Source, i.e. the possibility that other organisations and individuals will help support and further develop the software, you should familiarise yourself with the community of users and developers that is likely to collaborate with you on your software's further development. The IDABC "*Guideline for Public Administrations on Partnering with Open Source Communities*" is useful reading in this context[3]

4.4 Why is a licence important?

As we have seen, software is copyright protected. Without a licence, all changes, improvements, localisation (translations) are prohibited. Indeed, copyright law gives the owner of a work certain rights over it, and makes it illegal for others to use the work as if it was his/hers.

This permission is granted by the owner (the Licensor) to another party (the Licensee) through the use of a Licence, such as the EUPL.

As a F/OSS licence, the EUPL protects the rights of the original author, while giving to subsequent users and authors the freedom to use the software as if it were their own work.

The right to reuse of previous works is an important "facilitator" for modern programming, where multiple software components are linked or assembled together. It is therefore essential to establish that an appropriate licence exists for all components and – in the case components are delivered under several licences and if the resulting work has to be re-distributed to the public – that these licences are compatible together.

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[3] Published on IDABC web site:

http://ec.europa.eu/idabc/servlets/Docbe59.pdf?id=28128

4.5 The decision to publish software under a F/OSS Licence

If you are reading these guidelines, you probably are already aware that sharing software is one of the most efficient ways for of increasing its use, reinforcing its quality (allowing other developers to check, improve or increase enlarge functionalities) and saving costs by avoiding reinventing the wheel. Such sharing was unanimously recommended to public administrations by the European ministers responsible for eGovernment policy. This is best implemented through a F/OSS licence. While there are many other guidelines for the use of

Open Source in the public sector, with these guidelines and the EUPL, you do not need to worry about understanding all the issues around Open Source in general.

The EUPL was specially designed to facilitate the reuse of public sector software, to protect the investments done with taxpayers' money and to clarify issues that may affect you, as a software user.

4.6 The decision to select the EUPL as licence

The choice of a distribution licence should be done very early as it defines the rights of contributing developers and as it is difficult to change the initial choice afterwards.

In so far the licensor wants to avoid any exclusive "appropriation" of its software by a third party (this position is in general the one of the public administrations), the choice of the EUPL is recommended for several reasons:

- For the first time, a public body of the size of the European Commission has officially developed and approved a F/OSS licence for the release of its software.

- The EUPL is legally valid in all the official languages of the European Union, in

respect of the principle of linguistic diversity, as recognized by the Charter of Fundamental Rights of the European Union.

- The EUPL has considered the specificity and diversity of Member States Law and the Community Law (copyright terminology, information, warranty, liability, applicable law and jurisdiction).

- The EUPL ensures downstream compatibility issues with the most relevant other licences (including the most popular one, the GPLv2).

4.7 You need to refer to the licence inside the source code

The choice of the licence must be stated where the software is provided (e.g. on the software's website). There is no need to include the actual text of the licence there, a name and a link to the original licence text will better ensure the reference to a single source.

This informs the public what licence the software will be released under, but it's not sufficient for legal purposes. For that, the software code itself

must refer to the licence or contain the licence. The standard way to do this is to put the full licence text in a file called "COPYING" (or "LICENCE"), and then put a short notice at the top of each source file, naming the copyright, date, holder and licence, and informing the reader where to find the full text of the licence.

An example of "short notice" for software distributed under the EUPL is the following:

```
/*
 * Copyright 2007 YOUR-ORGANISATION⁴
 *
 * Licensed under the EUPL, Version 1.1 or – as soon they
   will be approved by the European Commission - subsequent
   versions of the EUPL (the "Licence");
 * You may not use this work except in compliance with the
   Licence.
 * You may obtain a copy of the Licence at:
 *
 * https://joinup.ec.europa.eu/software/page/eupl⁵
 *
 * Unless required by applicable law or agreed to in
   writing, software distributed under the Licence is
   distributed on an "AS IS" basis,
 * WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either
   express or implied.
 * See the Licence for the specific language governing
   permissions and limitations under the Licence.

*/
```

In the above example, the original author accepts later versions of the EUPL, which could be published by the European Commission. Distributing "under the EUPL" without any indication of a version number would produce the same effect, however less explicitly.

At the contrary, if the original author wants to limit his acceptance to a specific EUPL version (and to remain free to adopt later new versions or not), he should license as follows:

```
* Licensed under the EUPL, Version 1.1 only (the
 "Licence");
```

By licensing that way, any later version of the EUPL will not be applicable to the work or to derived works, without the agreement of the original author. The term "only" is recommended because it makes licensing conditions more explicit.

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⁴   Any first and last modification publication years, e.g. "2005, 2007"
⁵   Especially in the case of EUPL, which has an official value in all European Union languages, the page should be checked (and a copy of the licence should preferably be placed on your website and communicated along with the program downloading to avoid unexpected URL modification).

4.8 Best practices about "establishing" a EUPL contract

Between a EUPL licensed project owner (leader or entrepreneur) and all the other stakeholders (that should apply the EUPL terms) it is necessary to proceed as follows:

- Inform directly that the software (or specific components) are licensed under EUPL. This should be done on the project Web Site page, and at the "highest" page that is referencing or describing the project. For example, insert a prominent mention "Licensed under the **EUPL**".

- Link the term EUPL above with the URL where the licence text may be consulted and downloaded in various languages: https://joinup.ec.europa.eu/software/page/eupl

- Include a EUPL copy and a specific check box inside the application that is driving the software communication or downloading process. You will allow visitor to download the distributed software from a repository. The application should provide *"Please read carefully the EUPL licensing conditions below"*, then check the *"I agree"* box that is placed under the bottom of the window displaying the full text of the licence. The download process should continue only if the box has been checked.

  For such purpose, a .TXT version (EN) of the EUPL is provided on https://joinup.ec.europa.eu/software/page/eupl

- For software distributed through physical media (such as usb sticks, CD-ROMs or DVD-ROMs) it is still advisable to include a copy of the EUPL licence itself: you should copy the TXT version in a file named "Licence".

In addition, you may (this is optional) refer to the relevant IDABC web pages where more explanations and studies about the EUPL may be found : https://joinup.ec.europa.eu/software/page/eupl.

4.9 No need to register the consent of the approval of the licensee

The licence applies even without you keeping a register of users who consent to the terms of the licence. This is a function of how copyright law relates to your software.

The licence will produce a legal effect as soon the software (with software code mentioning that it is licensed under the EUPL terms) will be used, and such use will be demonstrated by the simple fact of exercising any of the rights granted by the licence, for example deploying the software in various departments of your organisation, at customers' sites (if you are a commercial organisation) or at clients' computers (if you are a public sector organisation) or sites communicating it on the Internet, creating or distributing copies or a derivative work..

Nevertheless, it may be useful for you to record contact information of those who download your software. In order to "know their users", many repository ask visitors to register with an "ID" (a name) and request some other information (address, phone etc.) including a unique e-mail address where a password will be sent to them. This, combined with the registration of the IP address, may provide you globally pertinent information prior to any downloading, however the reliability of such "authentication" is based on the other party input and goodwill.

Although useful to know your users, such collection of information is not requested for establishing EUPL rights and obligations.

4.10 Repository where the source code should be available

You can of course publish your software on your own website. However, the source code for your software should ideally be published in a repository that provides easy ways of using and developing Open Source software. This will also reduce the bandwidth requirements of your own website.

Note that publication in Open Source specialised "forges" or repositories does not reduce your control over the development and modification of your official version of the software.

4.11 How and where to communicate your decision?

If you release your software, you want other people to use it. This can only happen if people who may be interested in your software know about it.

You should prepare and widely disseminate information on your software - and its release under the EUPL - to communities of users who may be interested in your software. Some suggestions on how to do this include:

- prepare an one-page notice describing your software's functionality, target user audience, and the fact that it is released under a F/OSS licence (the EUPL).

- distribute this notice to communities of interest - for European public sector software this could include, for example, the EU Open Source Observatory and Repository (www.JOINUP.eu), the ePractice.eu website, your own administration web sites, etc.

- publish the software on a repository that is normally visited by your community of interest.

5. Developing or integrating software with the EUPL licence

5.1 F/OSS development principles

You can release any software you own, (developed by you, by your employees or a by your contractors as the case may be), under the EUPL.

However, if you are designing software from the beginning with the intention of releasing it under the EUPL, using F/OSS development principles will get you the most advantages. These principles include:

- Adopt a modular design, where components "talk" together without mixing all software codes.
- Work with a collaborative environment, (providing version control system and other tools to work remotely and manage your developers' community).
- Documentation of the application and of all modules in a standardized way.

- A strong leadership and project management, compatible with an attitude that is open to external participation and welcoming others ideas, while keeping control of the project and setting a direction.
- An efficient community interface (being a good communicator).

The IDABC Guideline for Public Administrations on Partnering with Open Source Communities provides further details on how to work with Open Source communities and use F/OSS development principles:
http://ec.europa.eu/idabc/servlets/Docbe59.pdf?id=28128

5.2 How the EUPL lets you integrate and combine software

Like other F/OSS licences, the EUPL is designed to ensure that software can be extended, modified and re-used in combination with other software.

Quite often, a software solution is extended by integrating in the source code of your work some existing software code, or by closely combining your work with existing software components, that are provided to you under their own licences. In such cases the integration/combination produces what is called a "derivative work". The possible distribution of a derivative work requires that all components have compatible licences.

Thanks to a unique compatibility clause, the

EUPL aims to facilitate the production and distribution of derivative works. The EUPL does this in the following ways:

- It ensures that all recipients of the software have access to the source code. This allows them to study how the software works.
- It ensures that all recipients of the software have the right to make changes. This allows them to modify, to extend or re-use the software.
- It ensures that derivative works must be distributed under the same or a compatible licence. This makes sure that the resulting software is also available to study, modify and further extend.

5.3 Why integration is useful – Why licences can limit integration

Organisations, in particular public administrations, spend billions of Euro building software that is often duplicative. Re-use of this software can save a lot of money, effort and time, and also allow sharing of resources and results across and between organisations, instead of constantly reinventing the wheel. One advantage of F/OSS licences, such as the EUPL, is allowing integration and re-use of software.

All proprietary licences limit integration and reuse, since source code is not automatically available.

Some F/OSS licences limit integration by requiring the use of the same licence in modified works. In contrast, the EUPL allows integration with software distributed under several commonly used F/OSS licences (see section 5.5).

5.4 Specific issues with the EUPL

The EUPL is not yet widely used. Therefore, it may be difficult to find existing components that are licensed under the EUPL in order to combine them with your EUPL software.

However, software under several F/OSS licences can be combined with EUPL software. It is the case with all components that are licensed under licences that do not impose restrictions on future licensing (all the "permissive licences", like for example the MIT or the BSD). Even software

distributed under common licences that impose some restrictions on further development can be combined with the EUPL using the compatibility clause (see section 5.5).

Note that the EUPL's nature as a licence supported by the European public sector should ensure that in the near future a significant amount of public sector software is available under this licence.

5.5 Compatibility with other licences

Many F/OSS licences allow modified versions of the original software to be distributed under another licence, including the EUPL. Such software can then be combined with EUPL software, with the resulting work distributed under the EUPL.

Some intensively used licences, however, insist that modified works must be distributed under the same licence. Normally, the EUPL also does this.

However, if you substantially combine EUPL software with software distributed under a "compatible licence", the EUPL allows the resulting software to be distributed under the compatible licence instead of distributing it under the EUPL itself.

The compatible licences are currently defined by the EUPL as being the:

- GNU General Public licence (GNU GPL v.2)
- Open Software licence (OSL) v. 2.1, v. 3.0
- Common Public licence v. 1.0
- Eclipse Public licence v. 1.0
- CeCILL v. 2.0

This list will not be reduced (anyway, as soon a merged or combined work will be validly licensed under a compatible licence, this may not be revoked), but could be enlarged (e.g. to later versions of the above if any).

5.6 Combining works with different licences

In the same solution, you can make use of various software components distributed under different F/OSS licences (including the EUPL) and use or distribute them together (i.e. in the same package, on the same CD-Rom). This kind of integration, where the various components communicate together to provide functionalities, does not merge the various source codes. Therefore, each software is used and distributed under the terms of its own licence. There are no compatibility issues between the licences in such case. At the contrary, if combining software extends to modifying or merging their source code, you will be creating a "derivative work" for which, in the case a distribution is planned, the compatibility of the licences must be analysed

Furthermore, you can develop software using a proprietary framework (e.g. Microsoft.Net or Biztalk) and release it under the EUPL, for the same reasons that there are thousands of Open Source software made to run under a proprietary platform (e.g. Microsoft Windows). In such case, you can release under the EUPL the specific code that you have produced, while any proprietary libraries or development environments required must be used, purchased from their vendor and distributed under their own individual licensing terms.
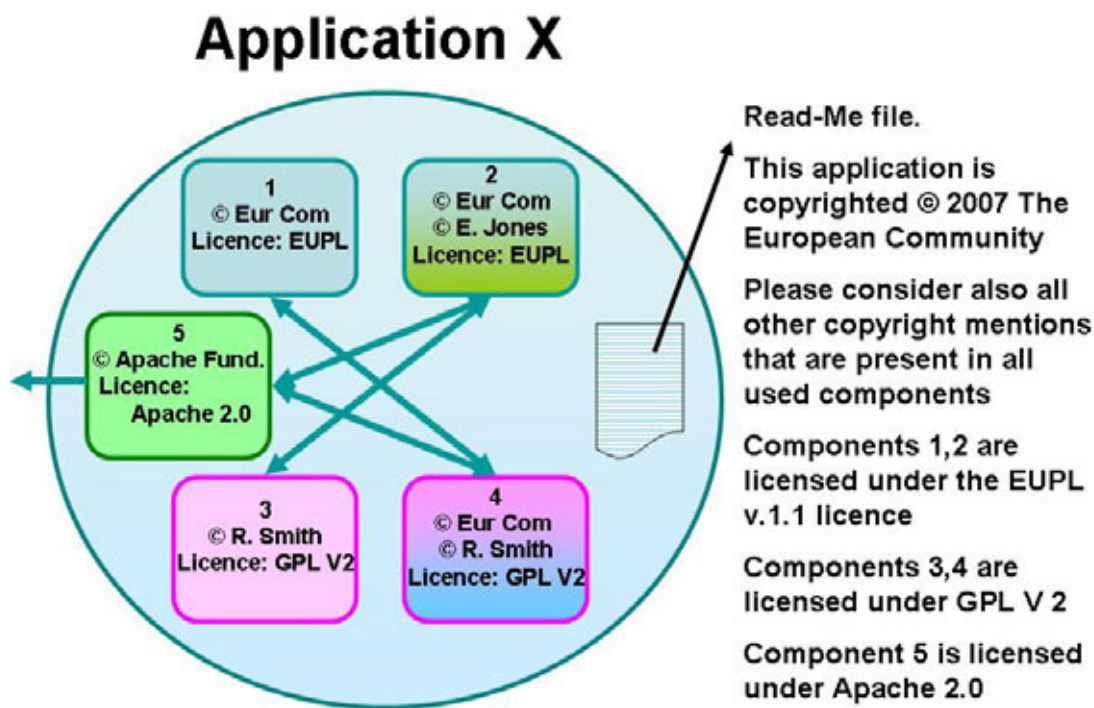
Practical example:

Figure 4: Integration of various components

Assuming the European Commission (for example, you can personalise with your own organisation) is distributing an "Application X" that is modular and includes 5 components. These components are not merged into a single source code file, but are "talking" together (by exchanging data or parameters).

Component 1 is produced by the European Commission (entirely written by its employees or contractors). Therefore it may be:

© European Community
Licensed under EUPL

Component 2 is produced by the European Commission, however it was not entirely written by its employees or contractors: they adapted and enlarged existing software licensed under the permissive BSD licence. The copyright owner of the BSD component is E. Jones. Therefore the modified component may be:

© European Community
© E. Jones (preservation of original copyright marks where original code is reproduced)
Licensed under EUPL

Component 3 was not modified, was produced by a Mr. R. Smith and licensed under GPLv2.

This may and will not change:

© R. Smith
Licensed under GPLv2

Component 4 was licensed under GPLv2. It was not possible or appropriate – for technical reasons - to avoid a merging of the EUPL code produced by the European Commission with the original source code, authored by Mr. R. Smith. Because EUPL accepts GPLv2 as compatible, the component will be:

© R. Smith
© European Community (where EUPL code is included / merged)
Licenced under GPLv2

Component 5 is in the same situation as component 3: it was not modified, and will stay:

© The Apache foundation
Licenced under Apache v. 2

The application will be provided with a read-me file explaining (or linking) to appropriate documentation and detailing the applicable licences.

5.7 Impact of the EUPL compatibility clause on the licensing conditions of another work

Could the EUPL be used as a "bridge" to transform the licensing conditions of another work, for example switching from GPLv2 to OSL, Eclipse, CeCILL or Common Public Licence?

Never, except if this was already allowed by the licensing provisions of this other work. In case of merging EUPLed software with another software licensed under a compatible copyleft licence, this other licence will be used without modification.

6. New versions of the EUPL

As many contractual reference texts and especially because it has so many linguistic versions, it is inevitable to adapt, as the case may be, the text of the EUPL to the evolution of the practice, of the technology, of compulsory regulations or of the vocabulary.

According to Article 13 of the EUPL, the European Commission may publish new versions of the EUPL, so far this is "required and reasonable" and "without reducing the scope of the rights granted by the licence". This means that:

The European Commission may update the licence to address new legal or technological issues that would otherwise keep the licence from functioning as intended.

Any new version will not change the fundamental characteristics of the licence, such as the freedoms it grants you, the liability exemption, or its reciprocal (or "copyleft") character, meaning that the exclusive appropriation of the licensed work will not be authorised.

The key word in this paragraph is **reasonable**. The European Commission can indeed update the license, e.g. to cope with new or previously unknown legal problems that would otherwise keep the license from functioning as intended. However, any such changes must be reasonable, meaning that they cannot tamper with basic characteristics of the license, such as the freedoms it grants you, the liability exemption, or its reciprocal (or "copyleft") character.

Each new version of the Licence will be published with a unique version number.

It is important to note that new versions are applicable to already licensed software if it were licensed without an explicit version number, or with the explicit provision that later versions become applicable. Due to the previous formulation of Article 13 in the EUPL v.1.0 ("new version becomes binding for You as soon You become aware of its publication") this is also the case for software that was formally licensed under the "EUPL v.1.0". Rule changes for later versions: if the original author formally licenses under the "EUPL v.1.1" this specific version will remain applicable (until the original author opts for upgrade, as the case may be).

Following another provision of Article 13 "All linguistic versions of this Licence, approved by the European Commission, have identical value. Parties can take advantage of the linguistic version of their choice."

This provision (that is today without equivalence in the world) protects both the licensor and the recipient (or licensee).

New linguistic versions, for example if the European Union is enlarged to one or more new Member States, would receive the same value after being approved and published by the European Commission. Also, the Commission may correct formal errors in order to ensure, as the case may be, that all linguistic versions of the licence are equivalent. In such cases, the version number will not be modified.

Finally, it is to be noted that the European Commission may always envisage the extension of the list of compatible licences provided for in an appendix to the EUPL.

7. Conclusions

Every day in the world, 1.5 million people (developers) are collaborating to more than 200.000 Free/Open Source projects, producing software that is used by more than 1 billion users.

Managers from well-known commercial companies like IBM, Microsoft, SUN, Bull, Oracle are licensing some Free/Open Source software and are building a part of their business and marketing strategy around it. Even pure software vendors are taking the opportunity to enlarge their users and developers base by distributing specific Free/Open Source material.

Public Administrations, which produce substantial quantities of e-Government software, stay behind so far in distributing it, meaning allowing other administrations, possibly from other States, to reuse it, to improve it and adapt it to their needs rather than to reinvent it completely.

The EUPL licence must be seen as a tool to facilitate such resource optimisation and sharing. It should raise awareness concerning the opportunities of Free/Open Source distribution and encourage all relevant stakeholders to follow the example provided by the European Commission, which released its own software under the EUPL.