

JOINUP

European Union Public Licence

**Impact
and
evolution**

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What is this presentation about



The European Union Public Licence (EUPL)

Impact of the EUPL (perception, use)

Potential evolution of the EUPL in the EIS
(European Interoperability Strategy)

1. The EUPL v1.1 ?



<https://joinup.ec.europa.eu/software/page/eupl/licence-eupl>

Public sector challenges:

- Doing more (and doing better) with less money.
- Not reinventing the wheel, while legal framework is (widely) global & European, but implementations are local.
- Sharing (= benchmarking, harmonising, re-using, localising) software, data, know-how and best practices.
- Common interoperability standards, between fragmented technical implementations.



Is this not sounding like the Open Source model ?

Growing EU awareness...

EU Ministers acknowledge the need for sharing technologies and solutions:

- Member States will promote the adoption of open standards in public administrations and share experiences...
- Member States will share technologies, where appropriate develop common solutions and work towards interface harmonisation of existing solutions (in the field of e-Procurement).



How?

- The Open Source model could be promoted for use in eGovernment projects.

EU Ministerial Declaration
approved unanimously on
24 November 2005, **Manchester**, United Kingdom

**EU Ministerial Declaration on
eGovernment** approved unanimously
on 18 November 2009 in **Malmö**,
Sweden,

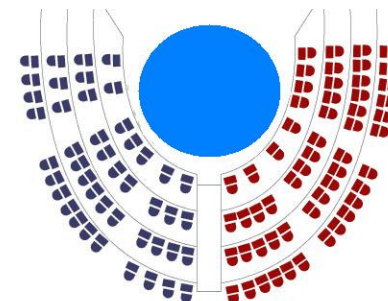
From “User” to “Producer” = IP questions *

- Software owned by governments = public sector assets (intellectual property).
- Open source licenses give/transfer rights to any third party (no discrimination) for any use (even commercial) and it authorises re-/sub-licensing !
- According to the principles of public accounting, can governments give goods to (private) third parties?



* i.e. Consip – Italy 2008
Carlo Vaccari - [The experience of introducing the EUPL at Istat](#) (27.09.2010)

Answers from authorities *



- The benefits of open source developments have been acknowledged by the political authority.
- There is no “cession” of public IP, because there is no deprivation.
- The Open Source model fits with the general criteria of efficiency, good performance and economy, since it allows, at least potentially:
 - cost savings on software development;
 - support from a community (corrective maintenance);
 - improvements (quality, speed, evolutive maintenance).

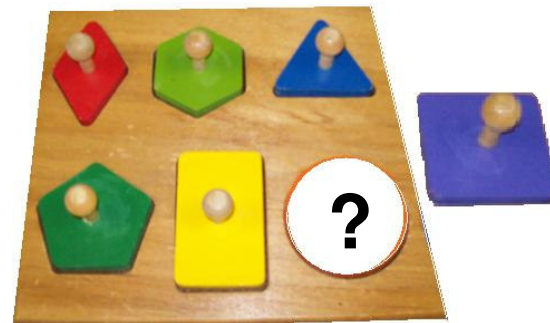
* Culture Commission (Chamber of Deputies - Roma)
Carlo Vaccari - [The experience of introducing the EUPL at Istat](#) (27.09.2010)



A European Public Licence ?

- Not a goal in itself !
- Need for a “legal instrument” to achieve policy objectives defined in the context of the Lisbon Agenda and the related i2010 Initiative.
- Need to use an existing or a new licence, to facilitate the OSS activities of the European Commission (need to share IDA and IDABC eGovernment applications: CIRCA, IPM, eLink).
- Other European and Member states administrations have similar needs – Therefore the need of linguistic versions.
- Need for a licence that could be used by everybody: administrations, businesses, and citizens.

Licence requirements (in 2005)



- Must exist in all official EU languages
- Any linguistic version is valid (no need for sworn translator)
- Conformity with European copyright law checked
- Uses European legal terminology
- Covers “communication to the public” (including SaaS)
- Defines applicable law (MS of the Licensor) and venue
- “Case law compatible” approach of warranty and liability
- Detailed... but comprehensive: based on legal principles, not technology or practices
- Pragmatic approach of IPR

No existing licence was compliant

The EUPL Calendar



- 2001-2004 “How to distribute EC software ?”
- 2004 “Adopt an existing licence or create one ?” first skeleton.
- 2005 Public consultation - Decision to create the EUPL
- 2006 Study (CRID) for making the EUPL interoperable
- 2007 (January) EUPL v1.0 approved by EC Commissioners
- 2008 Elaboration of 22 linguistic « working versions »
- 2009 (January) EUPL v1.1 approved by EC Commissioners
- 2009 (March) EUPL v1.1 certified by OSI
- *2012 (?) Evolution of the EUPL (v1.2 ?)*

To be or not to be Copyleft ?



Permissive licences:
software may be re-distributed
under any licence.
Weak protection against
appropriation
(BSD, MIT, Apache)

Copyleft licences:
software may be re-distributed
only under the SAME licence

(Stronger protection against
appropriation)

On **source code**: no
impact on combined
binaries
(LGPL, MPL, EPL)

On **source &
object** (“Strong” if
linking makes
derivatives)...GPL

EUPL

Interoperable: when needed, derivative /
combined works can be distributed under
another (listed) copyleft licence

Choice: **Copyleft** (no risks to pay royalties for a combined work based on software originally licensed), but **Interoperable!**

What makes the EURL different ?

<http://www.oss-watch.ac.uk/resources/licencefinder.xml>

- working licence in **22 languages**
- Drafted to work under **European law**
- **Warranty** relating to copyright from each licensor or contributor
- Allows code it covers to be distributed in a **larger work** under a selection of **other licences** and therefore...



The screenshot shows the OSS Watch website header with a magnifying glass icon and the text "OSS Watch open source software advisory service". Below the header is a navigation bar with links for "news", "publications", "events", "faq", "about", and "contact us". The main content area is titled "Open source licences" and contains a paragraph: "The most popular OSI-approved licences are described here both for general information and to help you to decide which licence best suits your situation." Below this paragraph is a list of links to various licenses, including "The GNU General Public License v2 - An Overview", "GPL v3 - What's New?", "The GNU Lesser General Public License v2.1 - An Overview", "The Mozilla Public License - An Overview", "The Modified BSD License - An Overview", "The Apache License v2 - An Overview", "Common Public Attribution License - An Overview", "The Eclipse Public License - An Overview", "GNU Affero General Public License v3 - An Overview", and "European Union Public Licence - An Overview". A blue arrow points to the "European Union Public Licence - An Overview" link.

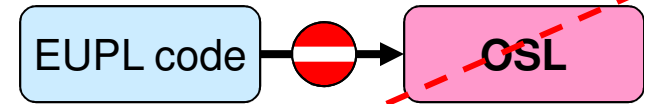
- ...effectively has a **variable** (= *interoperable*) **level of copyleft strength**

Understanding “*Interoperable copyleft*”

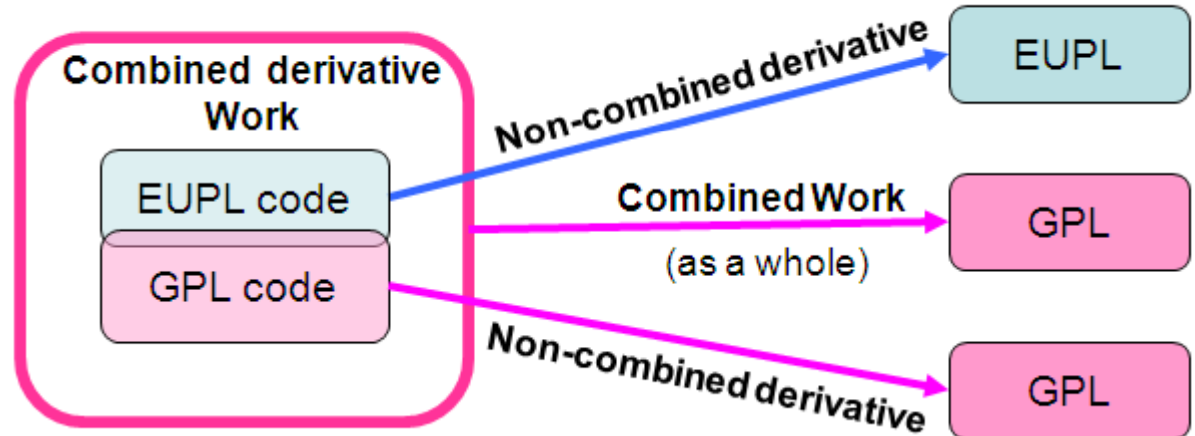
Larger derivative works can be distributed under a selection of other licences, (that are **all OSS copyleft**):



Simple **Re-licensing** under these licences is not allowed!



- **GPLv2**
- **OSL**
- **EPL (and CPL)**
- **CeCILL**
 - **GPLv3 / AGPLv3 (indirectly)**



Suspicious

Some of these licences are « *Weaker* » (= copyleft on source code only)...
 “Thus, developers can't rely on the EUPPL to provide a strong copyleft !”



Open-minded

Interoperability makes distribution possible, where it was not. It reinforces the OSS developers freedom.
By the way, why «strong copyleft» ?

2. Impact of the EUPL ?



Impact of the EUPL



- Community recognition:
 - OSI approved (March 2009)
 - FSF (EUPL is a “free software license”)
- Initial objective reached (allowing EU institutions to licence their own software).
- Bringing Member States to adopt the F/OSS model. About 30% of the projects from the European Commission “Software Forge” (www.JOINUP.eu) are covered by the EUPL.
- EUPL used by other public and private licensors (other forges).
- Commission VP Neelie Kroes (digital agenda) refers to the EUPL for easy licensing under the EU legal framework. *

* <http://www.youtube.com/watch?v=ok100U4Fo3Y&NR=1>

Examples in Member States:



- Estonia – Interoperability Framework / 2009
I.F. requires that software developments commissioned by the public sector should be freely used on the basis of the EUPL licence.
- Spain - Royal Decree 4/2010
“EUPL will be procured, without prejudice of other licences that can guarantee the same rights...”
- Malta - Government policy GMICT P 0097 (1 June 2010)
“Government shall seek to facilitate distribution of OSS Government solutions under the EUPL. ”
- The Netherlands – NOiV licence wizard
Recommends the EUPL for software owned by government.

Other examples



- Finland – Recommendation to use the EUPL - Use of the EUPL and MIT for the National Geoportal.
- Germany – EUPL for Wollmux (OpenOffice.org plugin).
- Austria: EUPL for open source electronic ID-card tools (MOCCA - Modular Open Citizen Card Architecture).
- Italy: EUPL at ISTAT (National Institute for statistics) / see also: www.eupl.it
- Some important GPL licensors accept to solve the few incompatibility issues by granting exceptions for **EUPL re-licensing** of larger derivative works:
 - Oracle (MySQL drivers under GPLv2)
 - Sencha (EXT JS components under GPLv3)

Impact on public procurement.



- Red.ES (Spain): “Contractor bid will be accepted provide the government has the right to distribute the delivered software application under the EUPL”

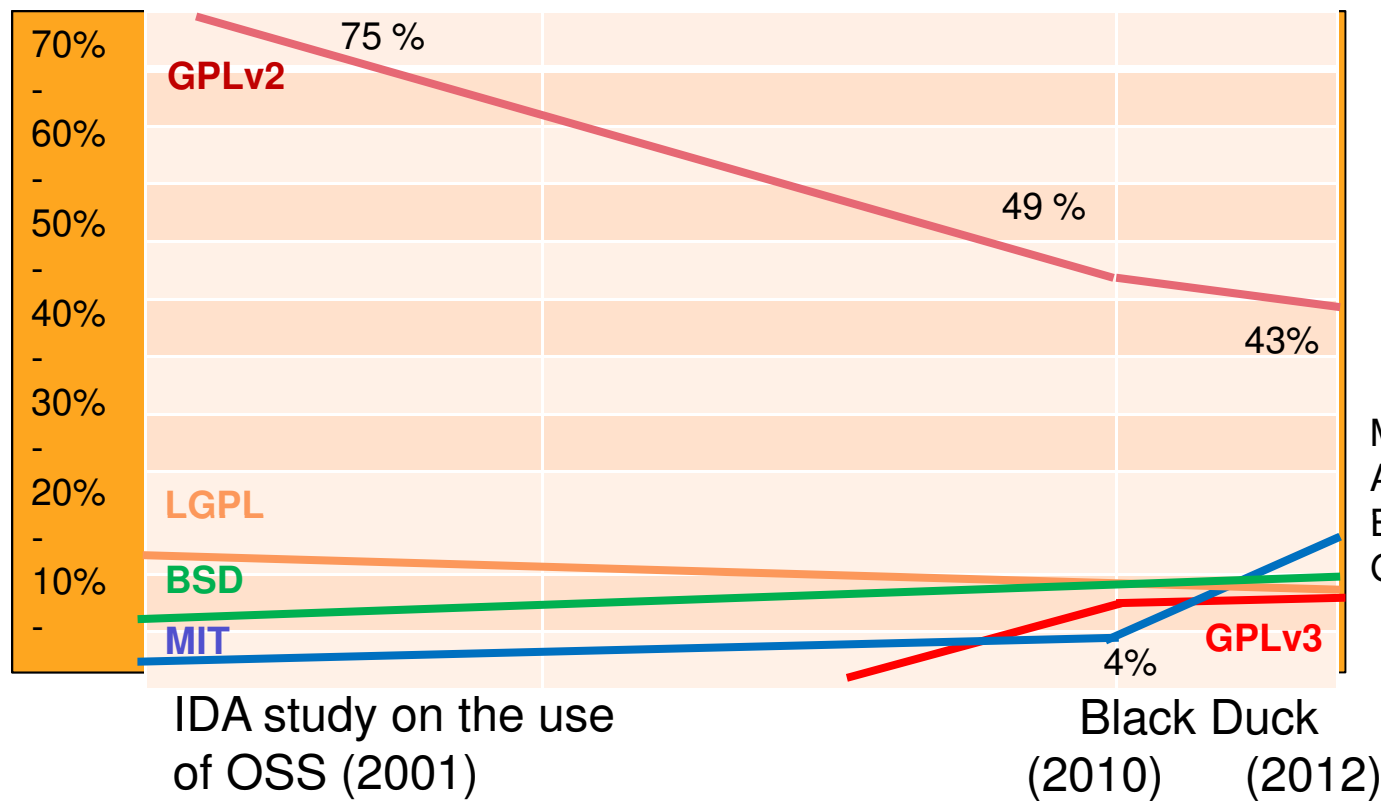
- Region Sardinia (IT): giving more points when solution is:
 - Reusable
 - EUPL compatible (total 3+2 = 5 !)

Technical Evaluation		Points
A	Quality and maturity of the proposed solution	20
B	Functional compliance with the needs	35
C	Quality and capacity of the service provider	10
D	Compatibility with the operating environment	10
E	Provision of a "re-usable" solution (1)	3
F	Provision of an "EUPL compatible" open source solution (2)	+ 2
Economical Evaluation		.
G	Delivery price	14
H	Yearly maintenance cost	3
I	Daily prices for "on request" support services	3
Total of points		100

3. Evolution of the EUPL ?



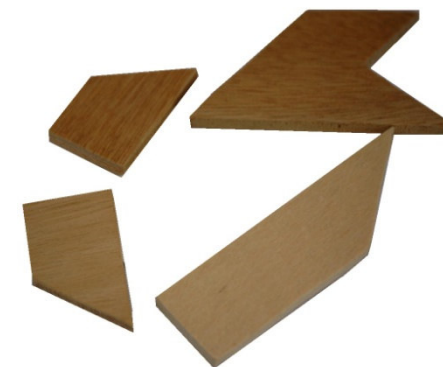
Evolution of OSS licensing



MIT 11.5%
Artistic 8%
BSD & LGPL 7%
GPLv3 & Apache 6%

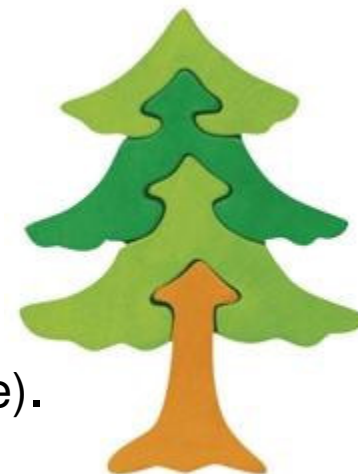
- Licence proliferation (more copyleft licences → interoperability issues);
- Since 2006, faster progression of the use of « permissive » licences;
- A growing number of « other licences » is outside the radar.

Challenge 1: Interoperability



- Licence proliferation is a fact. What to do?
 - Preserve the “positive” impact of copyleft (it aims reducing appropriation and resulting vendor locking).
 - Neutralise the “negative” impact of copyleft (barriers, virality and burden *between OSS communities*).
- Consider that the aim of the EUPL is not to “take market shares”: It is to bring more public administrations to distribute their own software (when applicable).
- an EUPL v1.2 (if approved by the EC) could formally update/extend its compatibility list (CRID study - 2006) to later copyleft licences (i.e. GPLv3, AGPLv3, ... MPLv2).
- New licences (i.e. MPLv2 in 2012) adopt a similar approach.

Challenge 2: Strategy



- Legal aspects of EIS could be more developed.
- Dare to “be **bold** !” (EIF highlights the EUPL... in a footnote).
- The EUPL is not to «impose» as a goal:
 - Opportunity to use other licences, when needed/applicable;
 - Other variants / models (i.e. permissive licences) for open data.
- Need to promote the EUPL as a – multilingual – reference document:
 - i.e. in ICT procurement guidelines: when the public administration **could distribute** the procured software, the specification **must** require from the provider « any licence » granting the **rights stated in article 2 of the EUPL**.
- Need to develop awareness on OSS licensing / on the EC example (i.e. avoiding “GPL or similar” exclusion cases).

Challenge 3: Reinforce the legal framework



- Bringing the EUPL up to date (v1.2).
- Other licences (or Open Data variant of the EUPL)
i.e.: the ISA Open Metadata Licence v1.1 .
- Answering the needs of other « European » software producing organisations: ESA, CERN, etc.
- Contributor agreements (copyright licence or copyright assignment).
- Focus on ICT procurement (PA obtaining full distribution rights).
- Cross-border model of «Mutualisation Agreement».
- Clarification on interoperability / APIs / linking between software components (need for case law...).

Recent Case law



- 2010 Italian supreme Constitutional Court confirmed a regional law favouring open source in public procurement because it expresses a legitimate legal requirement.
- 2011 French Council of State validates the choice of a specific OSS, followed by a public call for proposal for “commercial” services related to this specific OSS (and naming the OSS brand name) because the software code is freely available to all (everyone has chances to compete for delivering the services.)
- 2012 European Court of Justice (*C-406/10 SAS v WPL*) will make an application of the twenty years old directive on the protection of computer programs (91/250/EEC). Advocate general advises that interfacing, (re-producing APIs to make software interoperable) is not prohibited by EU copyright law.

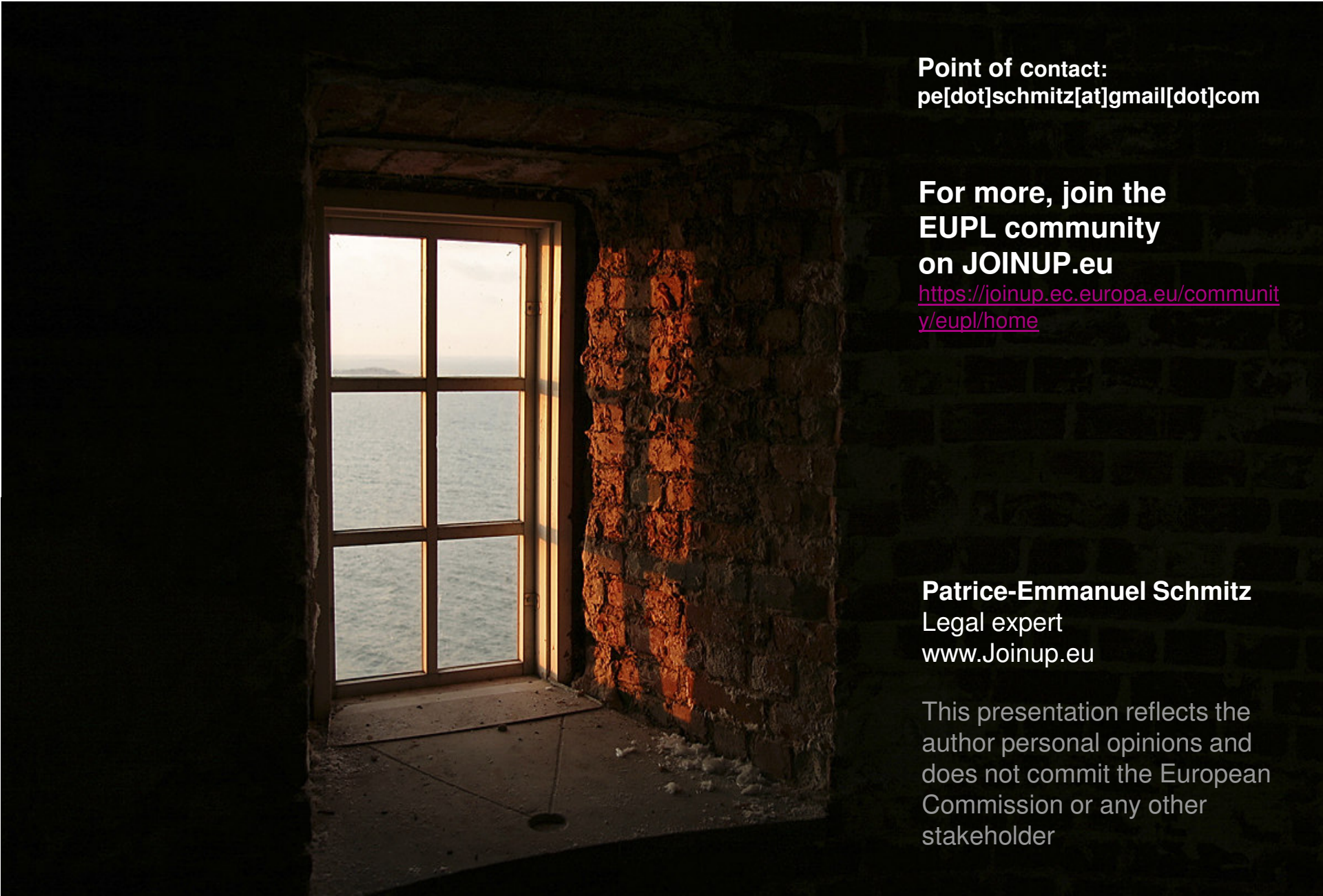
Conclusions



- Still a long way for implementing the Malmö declaration, but practice runs faster than “the law”...
- Commission Directorates, EU agencies and MS use the EUPL, even if the licence is quite “under-promoted” (i.e. in the EIF v2.0 and Digital Agenda).
- The EUPL – supported by other EC actions like www.JOINUP.eu is not a “legal curiosity” anymore.

*“The increasingly well developed legal infrastructure around Open Source Software, also thanks to initiatives such as the EUPL, provides a **solid and reliable foundation** for **public** and **commercial** activity, with clearly established ground rules.”**

* “PLAYING TO WIN IN THE NEW SOFTWARE MARKET”
REPORT OF AN INDUSTRY EXPERT GROUP ON A EUROPEAN SOFTWARE STRATEGY, June 2009
ftp://ftp.cordis.europa.eu/pub/fp7/ict/docs/ssai/European_Software_Strategy.pdf

A photograph of a window in a stone building looking out over the ocean. The window is framed by dark wood and has a view of the sea under a bright sky. The stone wall to the right of the window is illuminated by warm light, possibly from the sun. The overall scene is dimly lit, with the window providing the main source of light.

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