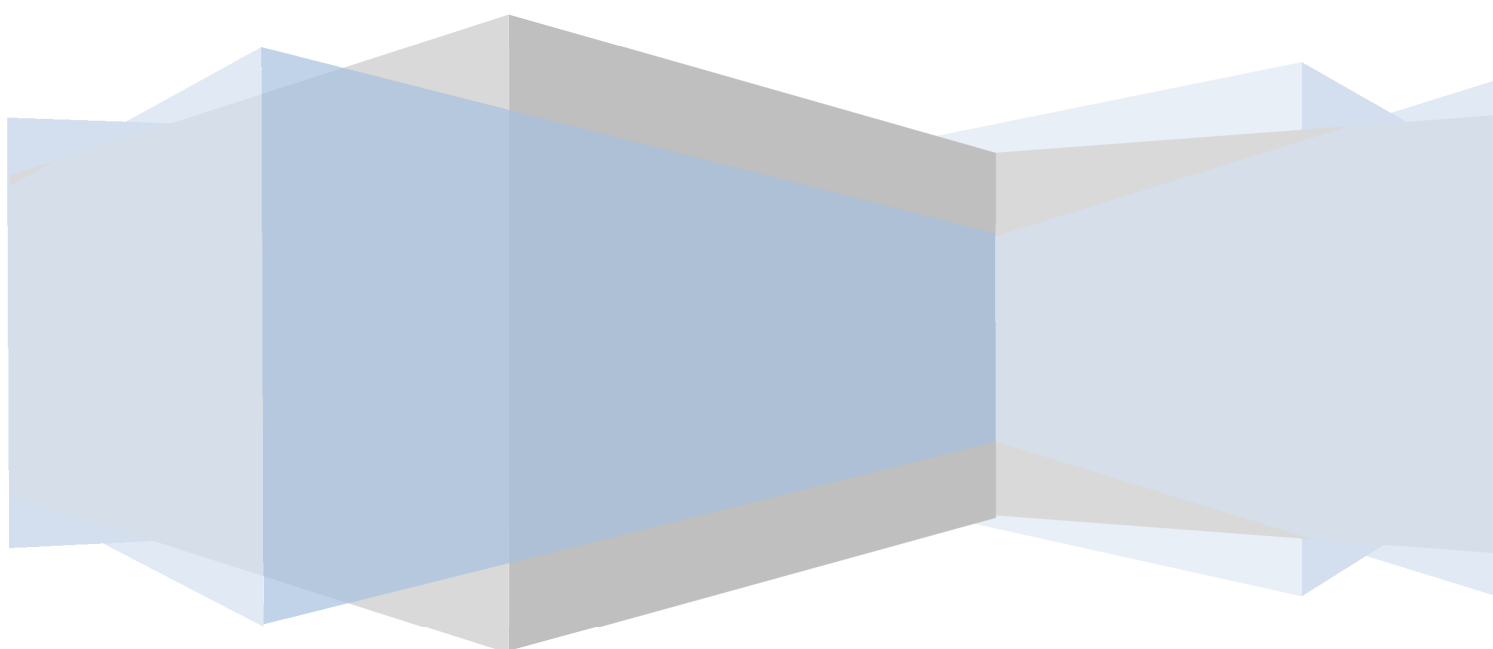


# Rationale for the Evolution of the EUPL v1.1 (towards the EUPL v 1.2)

Updated: 01 February 2014



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## 1. Background

The EUPL is the European Union Public Licence, published by the European Commission. It has been studied and drafted as from 2005 and launched in January 2007. The current version is the multilingual EUPL v1.1 (January 2009). In 2012, it is used for more than 500 software and non-software projects across Europe.

The EUPL is an Open Source (or Free Software) licence. Immediate objective was EC licensing of software produced under the IDA/IDABC/ISA programmes, in a way it could be reused, improved and integrated by any recipient. Long term strategy is to bring more licensors (mainly from public sector) to follow this example. The EUPL is also a “share alike” (or copyleft)<sup>1</sup> licence resulting from the aim to avoid exclusive appropriation of the covered software. The EUPL is share alike on both source and object code. The EUPL can be used by everyone: Member States, economic operators and individuals.

In 2009, the EUPL v1.1 was certified by the leading open source organisation, the OSI (Open Source Initiative) as the first and sole “OSI-approved licence” with multilingual working value.

As from 2012, the EC objective is to reinforce its legal tools (including the EUPL) for more sharing, reuse and interoperability. If copyleft aims to protect against appropriation, licence conflicts may also create legal barriers between OSS communities. Therefore the EUPL includes an appendix of “compatible licences” providing interoperability with a list of similar licences. As this list (based on a 2006 study) is outdated, a principal objective of the EUPL v1.2 is to update it.

Modifications introduced by the EUPL v1.2 should stay “as limited as possible”.

The publication of v1.2 will have no automatic impact when software was expressly covered “by the EUPL v1.1 only” (current licensors may opt for updating, or not), but v1.2 will be compatible with v1.1.

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<sup>1</sup> « Copyleft » or « Share Alike » is the strict obligation (i.e. in the GPL family of licences, the EUPL, the OSL etc.) to reuse the same licence when redistributing a covered software A, or a derivative of A.

## 2. What is changed in the EUPL v1.2?

The EUPL v1.2 draft highlights planned changes.

- Semantic: EUPL v1.2 provisions are about “the Work” (where previous version uses three forms: “Work”, “Work or software” and sometimes “software” only). The Lisbon Treaty (in force on 1/12/2009) has changed official denominations.
- Article 5. Alignment of the “compatibility clause” with the “copyleft clause”.
- Article 9. Additional agreements: simplified to cover a larger scope.
- Articles 14. Jurisdiction and 15. Applicable law: possibility to appoint a specific jurisdiction, in case this is accepted by parties. Extending the Court of Justice intervention to all EU institutions according to the Treaty on the Functioning of the European Union.
- Annexe (this is the main modification): Increase downstream interoperability with more compatible licences in the appendix: GPL v3, AGPL v3, LGPL, MPL v2 (see discussion)

## 3. Discussion: the EUPL compatibility list

Because interoperability is a complex question, this point will probably be the most commented.

### Purpose

The list regulates “downstream compatibility”, meaning the permission to integrate the work covered by the EUPL in later and larger works that are “derivatives”, and to distribute these derivatives (meaning new, other projects, with a new name). Therefore, the list is not about the licence-centric “upstream compatibility” which determines which copyrighted code could be added or merged with the existing software covered by the EUPL. (This is, for example, the purpose of the list of “GPL compatible licences” found on the FSF web site).

The **impact** of the list is not changed:

- it provides interoperability where “share alike” licensing becomes problematic (due to licence conflicts). The list does not mean that the European Commission (or any EUPL primary licensor) recommends or endorses the compatible licences: it just facilitates re-distribution of new and different projects by a secondary licensor and under another name (it increases developer’s freedom).

- It does not allow re-licensing of the software covered by the EUPL (including its core derivatives or modifications), neither re-using its brand name, logo, DNS etc.;
- It is applicable when all of the following conditions are met:
  1. Software covered by the EUPL is combined with another, different work.
  2. The combination (larger work) forms a derivative. Merged components must be licensed globally as a whole. Keeping distinct licences (like for the various parts of an aggregate) is not possible.
  3. The other work in which the software covered by the EUPL is merged is obtained under a compatible licence (according to the list).
  4. The same compatible licence (according to the list) is used to license the new larger work “as a whole”.

Is there a risk to see someone licensing some trivial code (like “hello world”) under a compatible licence for creating a “formal larger work” and licensing it under this compatible licence? No cases were reported in five years EUPL distribution (2007-2012). It is not the way open source operates. Making trivial forking is losing time and reputation. A forked work is sustainable only when a working community takes it over and improves it substantially.

### “Opt-out” condition

Copyleft (= obligation to reuse the same licence in case of re-distribution) and compatibility are regulated by two separate “clauses” in article 5.

The first “Copyleft clause” is conditional regarding the use of a later version of the EUPL (i.e. the planned v1.2, etc.): **“unless the Original Work is expressly distributed only under this version of the Licence”**. This condition (that was absent in the EUPL v1.0) was introduced in v1.1 since members of the open source community (OSI) were strongly reluctant to agree with a “signed blank paper” in case the Commission would publish a later version that they would dislike. Therefore they requested the option to distribute “under the EUPL v1.1 only”, and this option is used quite frequently.

The second “Compatibility clause” was not expressly not conditional (even if licensors using the wording “Licensed under the EUPL v1.1 only” may perhaps think so). Therefore it authorises the redistribution of the code (in another derivative project) under a compatible licence, according to the appendix (compatibility list).

Because the Appendix of the draft EUPL v1.2, extends the default to other licences **and to any later version of the EUPL itself**, the two clauses (copyleft and compatibility) seems closely linked, and it may appear as inconsistent to find the condition “**unless ...**” in the first clause and not in the second one.

Therefore the proposition to harmonise the two clauses (only the second is modified), knowing that un-conditional licensing will stay the default option:

**Copyleft clause:** If the Licensee distributes or communicates copies of the Original Works or Derivative Works, this Distribution or Communication will be done under the terms of this Licence or of a later version of this Licence unless the Original Work is expressly distributed “ONLY” under this version of the Licence. The Licensee (becoming Licensor) cannot offer or impose any additional terms or conditions on the Work or Derivative Work that alter or restrict the terms of the Licence.

**Compatibility clause:** If the Licensee Distributes or Communicates Derivative Works or copies thereof based upon both the Original Work and another work licensed under a Compatible Licence, this Distribution or Communication can be done under the terms of this Compatible Licence, **unless the Original Work is expressly distributed “ONLY” under this version of the Licence.** For the sake of this clause, “Compatible Licence” refers to the licences listed in the appendix attached to this Licence. Should the Licensee’s obligations under the Compatible Licence conflict with his/her obligations under this Licence, the obligations of the Compatible Licence shall prevail.

## Compatibility Criteria

Conditions for inclusion in the EUPL compatibility list are not changed. They were defined in a 2006 study by CRID (Philippe Laurent & François Bastin):

1. the compatible licence should be recognized as a FOSS licence (by the acceptance as such by either the FSF or the OSI);
2. the licence must be copyleft (at **least as regards the source code**); and
3. the licence must be of practical use, that is
  - a. a large number of software rely on it, or
  - b. it governs either
    - i. at least one major software having a large number of user in the field where it applies, either
    - ii. a project developed inside a public administration of a Member State of the European Community, or
    - iii. a project partially or totally funded by the European Community or one of its Member States.

## The current v1.1 EUPL compatibility list

The EUPL compatibility list already includes the following licences:

- 1) Licences that are “copyleft” on both source and object code
  - GNU GPLv2
  - Open Software License (OSL) v. 2.1 and v. 3.0
  - CeCILL v. 2.0
- 2) Licences that are “copyleft” on source code
  - Common Public License (CPL) v. 1.0
  - Eclipse Public License (EPL) v. 1.0

The list is outdated. It does not include the GPLv3 and AGPLv3, the CPL is replaced by the EPL (it can be removed); there are new licences and new versions of existing licences in preparation.

## The planned v1.2 EUPL compatibility list (in discussion)

- 1) Licences that are “copyleft” on both source and object code
  - GNU GPLv2 and GPLv3
  - GNU AGPLv3
  - Open Software License (OSL) v. 2.1 and v. 3.0
  - CeCILL v 2.0, v 2.1
  - European Union Public Licence (EUPL), any version as from v. 1.1
- 2) Licences that are “source only” copyleft
  - Eclipse Public License (EPL) v. 1.0
  - MPL v. 2
  - LGPL v. 2.1 and v.3
- 3) Other share alike licences
  - Creative Commons Attribution-ShareAlike v. 3.0 Unported (CC BY-SA 3.0) for works other than software

## Licences that are “copyleft” on both source and object code

GNU GPLv3 and AGPLv3: these licences are already “de facto, implicitly” included in the EUPL list, because the list includes CeCILL, and this licence allows users to re-distribute under the GPLv3 and AGPLv3. The AGPL coverage of Software as a Service (SaaS) is similar to the EUPL approach, which defines distribution as “*making*

*available, on-line or off-line, copies of the Work or providing access to its essential functionalities” (Article 1 EUPL).*

The GPLv3 has met mixed reactions. Including it in the EUPL compatibility list is not an endorsement, but increases interoperability. It gives the freedom to a secondary licensor to create a new larger solution from components received under the EUPL and GPLv3, and to distribute it. The original EUPL licensor (i.e. the Commission, a public administration, etc.) will not be involved in this new distribution (that would be done as a new project, under another brand name).

A new CeCILL v2.1 is included in the draft, because it will be published soon. Based on cooperation with the CeCILL stewards, the two licences (EUPL and CeCILL v2.1) will be interoperable. Therefore, CeCILL 2.1, which is at the last stage of OSI-approval, is added.

Adding the “previous” EUPL v1.1 and later EUPL versions solves hypothetical conflicts between these versions. Therefore it will be allowed to merge software covered by the EUPLv1.2 in a work already covered by the previous EUPL v1.1.

For works (or parts of the covered work) other than software, it was appropriate to consider also the most used Creative Commons share-alike licence: CC BY-SA 3.0

## Licences that are “source only copyleft”

The EPL (which is maintained) has replaced the CPL. This is acknowledged by relevant licence stewards and by the OSI. Therefore the CPL can be removed without any damage. This has no impact on larger combinations already licensed (EUPL v1.1 + CPL), as the case may be. This was confirmed on the discussion forum. We are not aware of existing derivatives from code covered by the CPL and the EUPL v1.1. However, in case it would exist, licensing done will stay valid.

Legal analysts (IFross<sup>2</sup>) have considered that the EPL was a “Strong copyleft” licence. It was said also that the copyleft of the EPL is “weaker” (than the copyleft of the GPL, but it does not mean “weak”), because according to Article 3 EPL, a contributor may choose to distribute the Program in **object code** form under its **own licence** agreement.

However, the EPL protection remains quite strong as this “own agreement” must:

a) comply with the terms and conditions of the EPL;

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<sup>2</sup> The German license center ifrOSS lists the Eclipse Public License in the category “Other Licenses with strong Copyleft Effect”. See <http://ifrOSS.org/en/license-center>



- b) state that the source code for the Program is available, and inform licensees how to obtain it in a reasonable manner on or through a medium customarily used for software exchange.

The point of extending the EUPL compatibility list to other copyleft licences is based on the selection made by “OSS Watch” (university of Oxford) where the 10 most popular OSI-approved licences are listed<sup>3</sup>, and on the most recent books as “Option Libre” from Benjamin Jean, which selects a dozen of copyleft licences with some importance<sup>4</sup>. The MPLv2 (January 2012) and the LGPL are present in both selections.

#### 1. MPL v2

The new MPL v2 (approved by OSI in January 2012) looks not clearly different from the EPL regarding copyleft (on the source code). Compared to the MPL v1 it is simpler, shorter and more usable. The new licence has adopted approaches (and sometimes the terms themselves) from other open source licences: the patent licence provision was adopted from the Apache licence and the termination provision from the GPL v3. In addition – inspired from the EUPL<sup>5</sup> – the MPL v2 has introduced a provision to make the licence “compatible” with other copyleft licences, the “Secondary Licences” (GPL v3, AGPL v3, LGPL v3). The Initial licensor has an “opt-out” possibility to include a notice stating that the software is “Incompatible with Secondary Licences” (in such case the covered source code will stay MPL v2 only).

A MPL executable may be sublicensed under different terms, provided that it does not to limit or alter the recipients’ rights in the source code form under MPL.

A larger work may be licensed under any terms, provided that it complies with the requirements of the MPL for the covered software.

The MPL copyleft could also be perceived as “weaker” than the EUPL copyleft, because it does not use the copyright concept of “derivative work” to determine what additional software needs to be “MPLed”. It has a narrower definition, based on individual files. However, it keeps the covered code itself open source, even when allowing expansion of the code via new files that can be licensed in non-open ways.

#### 2. LGPL (all versions)

The GNU LGPL (L for “Lesser”) is a variation of the GPL. Originally known as the Library General Public License, it was drafted to provide a moderated form of copyleft for use in certain specific circumstances.

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<sup>3</sup> <http://www.oss-watch.ac.uk/resources/licencefinder.xml>

<sup>4</sup> <http://framabook.org/option-libre-du-bon-usage-des-licences-libres>

<sup>5</sup> According to Simon Phipps, member of the OSI board, “Can Mozilla Unify Open Source?”  
<http://blogs.computerworlduk.com/simon-says/2012/01/can-mozilla-unify-open-source/index.htm>

The most used version is the LGPL v2.1. A LGPL v3 version was published to coincide with the publication of the GPL v3.

The LGPL is especially aimed to “libraries” or components aimed to be “used” meaning “linked” with other programs. This is the reason why some current or potential EUPL users<sup>6</sup> have requested a EUPL evolution that would be more “business friendly” like the LGPL.

In fact, the LGPL defines a separate class of works which may be derivative but which nevertheless can be licensed in any way (*larger works that use the library*). These works contain little or no code from the library in their source form. Such vision is close to the vision implemented by Directive 91/250 on the computer program protection where, under specific conditions, the reproduction of the portion of code needed for interoperability, like APIs or data formats, cannot be restricted by any copyright licence (even by a proprietary one, as confirmed by recent ECJ case law<sup>7</sup>).

However, the copyleft on the covered source code is firmly established by the LGPL: the aim of the licence is to preserve the ability of recipients to modify the LGPL-licensed components and still have it work with the (possibly closed source) work that uses it.

According to the OSS-Watch summary<sup>8</sup>, The aim of the licence here is to preserve the ability of recipients to modify the LGPL-licensed library and still have it work with the (possibly closed source) work that uses it. Any distribution must include the source code to the library, and prominent statements of the ownership of the library. It must also either

- include the source code of the *work that uses the library*
- include a facility which permits the *work that uses the library* to work with modified versions of the library, provided of course that the modified library retains its interface. The second option there is most easily accomplished by having the *work that uses the library* dynamically access library functions when it is executed, rather than have it copy the library functions into its own code at compile time, and the LGPL v2.1 explicitly suggests this as a way of fulfilling its requirements.

Therefore the inclusion of the LGPL (v 2.1 and v 3) in the EUPL compatibility list may correspond to the aim of interoperability (extending it for the benefit of a second

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<sup>6</sup> I.e. a government agency distributing reusable components aimed to authenticate e-ID, electronic signature etc.

<sup>7</sup> European Court of Justice – Case 406/10 of 2 May 2012 SAS vs WPL

<sup>8</sup> <http://www.oss-watch.ac.uk/resources/lgpl>

generation of licensors) without increasing the risk of exclusive appropriation of the covered code.