

The European Union Public Licence



A reciprocal open source licence providing compatibility and interoperability in the framework of EU law.

When publishing the communication “[Open Source Software Strategy 2020-2023](#)” the European Commission has, once again, reiterated importance of sharing interoperable software. “[Think Open](#)” states that software produced with the objective of being used outside the Commission, will be open source and published under the European Union Public License (EUPL). A growing number of Member State governments, public and private bodies are now distributing their software under the licence. It looks useful to keep in mind the implications of the EUPL unique strategy based on key concepts: **Open source, Reciprocity, Compatibility, Interoperability** and **Compliance with EU law**. In addition, the EUPL is supported by a **Strong community** on Joinup.eu and used by a growing number of licensors, from both public and private sectors.

Open source means that the EUPL is compliant with the Open Source Definition (OSD); It means that the covered work (software or ancillary data, as the EUPL covers “the Work”) can be used, copied, inspected, modified or adapted (creating derivatives) and communicated or distributed to third parties.

All these rights are granted to the licence recipients without restrictions based on nationality, geography or business purpose and without contractual formalities: the licence exists and is binding as soon the recipient starts exercising at least one of the licensed rights.

Nothing in the EUPL restricts commercial use, by selling the covered software (for example asking for a contribution in development costs to the circle of initial recipients) or by delivering additional commercial services (support, training, maintenance). However, it is stated that the licence is **royalty free**. This is because the Open Source model is not compatible with royalties based on a follow-up and control of the number of users, the number of transactions, size of computers or any other indicators based on monitoring the use of the software. Such follow-up is impossible to implement in an Open Source business model, where any initial recipient may redistribute the software to any third party. The OSD is provided by a non-governmental organisation, the OSI (Open Source Initiative). A pre-existing organisation, the Free Software Foundation (FSF) forged its own definition of “free software” based on its specific philosophy and freedoms. These two organisations have their own priorities and approaches, but the granted rights are identical. The EUPL is compliant, and acknowledged by both organisations as an **open source** and/or as a **free software** licence.

Reciprocity. The EUPL is a reciprocal licence: in case the software is modified or improved and redistributed by a third party, its source code must be published and provided back under the same licence. The concept of reciprocity was developed under the name “**copyleft**” by the FSF at the beginning of the 90’ and is a characteristic of the GNU/GPL and AGPL licences. **Reciprocity** is precious to keep a certain control on the works’ derivatives and ensuring that improvements, if any, will be returned to the original licensor and to all other recipients. **Reciprocity** ensures that sharing software is not a loss of copyright ownership, since distributed derivatives cannot become the exclusive property of a third party.

The obligation of **reciprocity** exists as soon a derivative work is distributed to third parties and not if it is just used internally. However, the EUPL specifies that providing on-line access to the covered work or to its essential functionalities is a form of distribution. Therefore, as soon a derivative is used to provide on-line services, the provider has to provide access to the modified source code.

Reciprocity differentiates the EUPL from another group of open source licences that are called “**permissive**”; these licences do not request reciprocity and tolerate exclusive appropriation of derivatives. The most used permissive licences are the MIT, BSD and APACHE.

Compatibility does not have a strict legal definition. but can be seen as the characteristic of two (or more) licences according to which the code distributed under these licences may be merged together in order to create a bigger distributable software. This implies the right to distribute the bigger software globally under a single licence (that could be one of the licences covering the merged source codes, or a new licence). This must not be seen as a “re-licensing” (changing the original primary licence) of the received components but it is applicable to the new combined work as a whole and to any new code that has been added.

Compatibility is a fundamental characteristic of **permissive** licences, since outside the simple “attribution” or acknowledgement of the original author they generally do not specify follow-up conditions in case derivatives are distributed. At the contrary, most **reciprocal** (or “copyleft”) licences like the GPL or the AGPL have no or very poor compatibility. Facing a growing number of reciprocal licences (that is called “licence proliferation”) an OSI report stated in 2004 already that “many of the licenses are legally incompatible with other free and open source licenses, seriously constraining the ways in which developers could innovate by *combining* rather than merely *extending* Open Source software.”

The EUPL innovates in this field by combining **reciprocity** with a large downstream **compatibility**. The EUPL Appendix lists compatible reciprocal licences and recipients can reuse or merge the source code covered by the EUPL in another source that is distributed under such compatible licence, in the framework of another project. This permission must be used to avoid licence conflicts, when licensing the various components separately under their different primary licences would otherwise be impossible. Appendix to EUPL-1.2 provides this compatibility with the following licenses: GPL-2.0 and 3.0, AGPL-3.0, LGPL-2.1 and 3.0, OSL-3.0, CECILL-2.0 and 2.1, EPL-2.0 and 2.1, CPL-1.0, MPL-2.0, LiLiQ-R and Rplus, and with CC-BY-SA-3.0 for data. Compatibility may be extended to later versions of the listed licences, when resulting from the provisions of the compatible licence itself (if it authorizes distribution under later versions) or resulting from Appendix updates, as the European Commission may update it to later versions of the listed licences without producing a new version of the EUPL, as long later versions provide the same granted Open Source rights.

Interoperability is a legal concept in EU law. Directive 91/250/EEC states that it is "the ability to exchange information and mutually to use the information which has been exchanged" (Recital 10) and that for implementing this interoperability, the reproduction of "interfaces" defined as "the parts of the program which provide for interconnection and interaction between elements of software" is authorised "as a copyright exception to the author's exclusive rights" (that are possibly formalised in a copyright licence), provide "this exception is not used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program". (Recital 15). In other terms, no licensor may create barriers or put conditions restricting or impacting the interfacing (or the action of linking, which is a synonym) of his own software, with another independent software. It looks reasonable to consider the "**Independent**" requirement as quite important here, even if not formulated as such in the directive, because if one of the software components is specifically built as an "add-on" or simple extension made for complementing a licensed software and cannot provide any functionalities outside complementing this software, the global combination between the licensed software and this "add-on" could be seen as a "**derivative**" of the first. A derivative work inherits from all licensing conditions (permissions, obligations and prohibitions) of the original software. At the contrary independent software could be interfaced or linked (by a copy of the needed interfaces) without impacting their licensing conditions.

Due to the EU legal definition of interoperability, the famous theory of "strong copyleft", where linking statically or dynamically different independent software creates in all cases a derivative is not applicable to the use of the EUPL: It is not a "viral" licence, presenting risks for software licensed differently, including proprietary software. Covered components can be linked/interfaced with others. In a combined work where independent components are interfaced (by copying their interfaces), each component keeps its primary licence.

Compliance with EU law has multiple implications. First, the licence, which is part of EU law (EC Decision published in Official Journal on 17 May 2017 – re EUPL-1.2) is **multilingual**. It has, just like all other EU legal instruments, a legal working value in all the 23 European Union languages.

Second, there are other aspects referring, explicitly or implicitly, to the European legal framework. We can mention the recognition of moral rights, the information due to the public, the moderation of liability exclusions (since a total exclusion would not be compatible with EU and national product liability regulations) and the recognition of the Court of Justice of the EU as ultimate competent

court in case of litigation when EU law needs clarification. The European Union has innovated in multiple areas of information and communication technologies that are all applicable in case of interpretation of the EUPL and are now considered as world-wide standards, from the directive on the legal protection of computer programs to the most recent General Data Protection Regulation (GDPR).

Because the source code covered by the EUPL can be redistributed across the world, the licence may as well be used, even as a primary licence, by third countries public or private organisations located outside the EU and having no seat inside the EU. However, in such case the licence interpretation must be done according to the EU law.

Strong community support is mainly provided through the official EU sharing website www.Joinup.eu and by multiple EC publication, like the “Open Source Software Strategy 2020-2023”. Support was initiated 15 years ago when publishing the first EUPL-1.0 draft in 2005 and was continued without break across the multiple EC “action programs”: IDA, IDABC, ISA and ISA². Future support will be depending on EUPL evolutions (currently EUPL-1.2) since the EUPL is not seen as a goal in itself but as a tool: the Commission may publish other linguistic versions and/or new versions of the licence and/or of its compatibility appendix, so far this is required and reasonable, without reducing the scope of the rights granted by the licence. Joinup publishes multiple EUPL pages, [text in 23 languages and format](#), different analysis, [news](#), infographics, guidelines and a licence [compatibility matrix](#). In 2020 Joinup has published the JLA ([Joinup Licensing Assistant](#)), a general purpose tool for selecting an open licence based on its content, for comparing licences and assessing their compatibility/interoperability.

Last but not least, JOINUP users may obtain free legal support by formulating questions through the [Joinup contact form](#).