



# EUROPEAN OPENSOURCE & FREE SOFTWARE LAW EVENT

## Licence compatibility and interoperability in FLOSS procurement and distribution. The EUPL case

Patrice-Emmanuel Schmitz, Legal expert, [www.osor.eu](http://www.osor.eu)



# What is this presentation about



Expectations re F/OSS software **production**  
by governments, resulting in the EUPL  
(European Union Public Licence )

Discussion on copyleft licences  
interoperability

\* F/OSS or OSS, or Free Software, OSS/FS, FLOSS, or FOSS

# Public sector challenges (2010):

- 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, know-how and best practices.
- Common interoperability standards, between fragmented technical implementations.



Is this not sounding like the  
Free /Open Source model ?

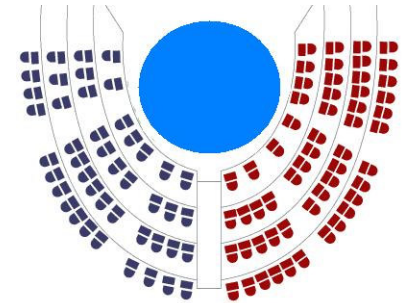
# Classical “old” IP question \*

- 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)

# Classical answers \*



- 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)

# At EU level...



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 eProcurement).

## 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**

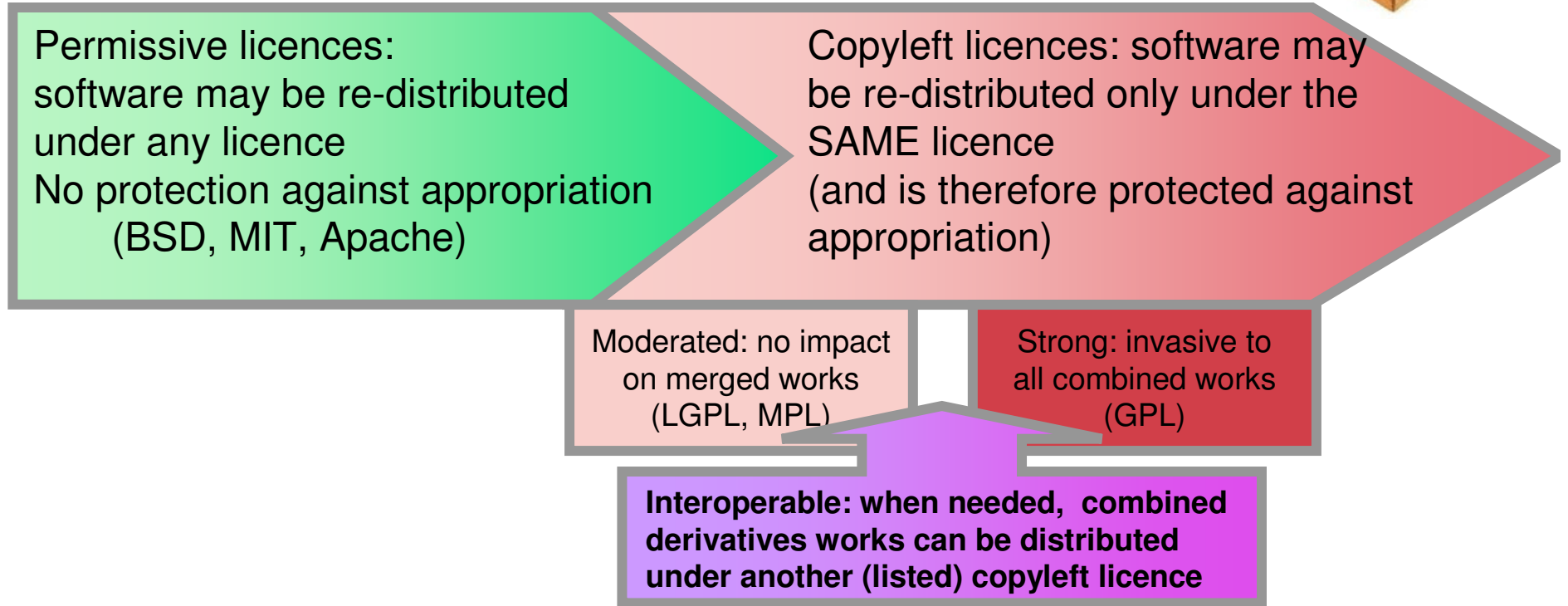
**eGovernment** approved unanimously

on 18 November 2009 in **Malmö**,  
Sweden,

# Licence requirements



First question: To be or not to be “copyleft”?



Choice: be “**copyleft**” (refusal of the risk to pay royalties for a derivative work based on software originally licensed), but be **interoperable**!

# Decision to create the EURL



- Licence 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 copyright law and terminology
- Covers “communication to the public” (including SaaS)
- Defines applicable law (MS of the Licensor) and venue
- Realistic approach of warranty and liability
- Detailed... but comprehensive: based on legal principles, not on technology and business practices
- Realistic approach of IPR and patents
- Interoperable: for **derivatives** based on both the EURLed work and a work covered by a compatible licence (GPLv2, OSL, Eclipse, CeCILL)

# 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: The EUPL is used by 30% of the projects from the European Commission “Software Forge” ([www.OSOR.eu](http://www.OSOR.eu)). Proportion is growing.
- 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.

# Interoperability... a major need?



- Licence proliferation is a fact: “100+” licences
- Copyleft licenses are NOT compatible
- Recent licences (EURL & GPLv3) added complexity  
(i.e. Gplv2 and GPLv3 are not compatible)
- The issue is (fortunately) limited to specific case, i.e. when you want to merge code from two different programs into a single program.
- But F/LOSS solutions implementation depends on combining / linking / merging multiple components (→ licence conflicts)
- Based on a database of 180.000 products and their F/OSS licences BlackDuck patented a “wizard”
- Neolab says 50% audited projects have issues (20% severe)

# impact on procurement / distribution

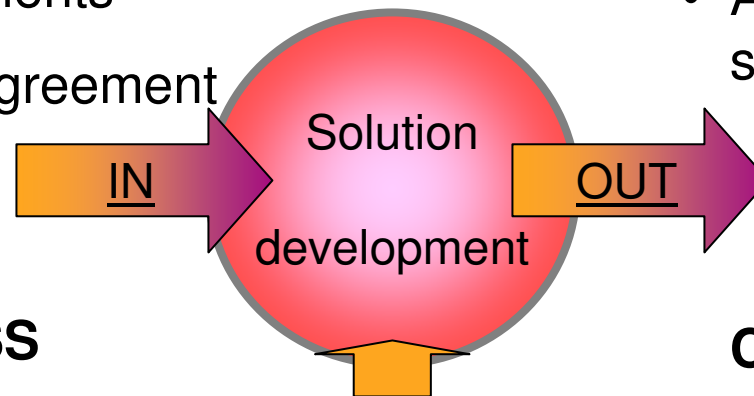
## Upstream

- Own developments
- Contributors agreement

## Downstream

- A single licence for the solution (i.e. EUPL)?

Existing F/OSS component



Interoperability issues?

Compatible licenses?

- **Aggregate**: using it as a set of independent works that are not forming a larger program (no integration)
- **Combined/linked**: program forms a singular identity in terms of use and perception, due to interconnection / linking
- **Derivative**: merging or modification of the components code

# The solution invented by the EUPL



- If the Licensee Distributes and/or Communicates **Derivative Works** or copies thereof based upon **both the Original Work and another work licensed under a Compatible Licence**, this Distribution and/or Communication **can be** done under the terms of this Compatible 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**

- **Combined/linking (collective works)**: no problems
- **Derivatives**: the EUPL (strong copyleft in that case)
- **Combining Derivatives (2 conditions)**: The EUPL or the compatible license (GPLv2, OSL, Eclipse/CPL, CeCILL)

# Is the monster “real” (MPL v2 review) ?



Larry Rosen scripsit:

I have no quarrel with the EUPL that refers to **"Derivative Works** or copies thereof based upon **both the Original Work and another work** licensed under a Compatible License...."

The MPL 2, on the other hand, uses different words. It says, "if You create a Larger Work by **combining** Compatible Software with a work governed by a Secondary License...." My argument is with the word **"combining"**, which leaves the erroneous impression that merely combining two works affects their licenses. That nonsense ought not be echoed in new licenses.

## ...or mostly FUD ?

# Clarifying interoperability

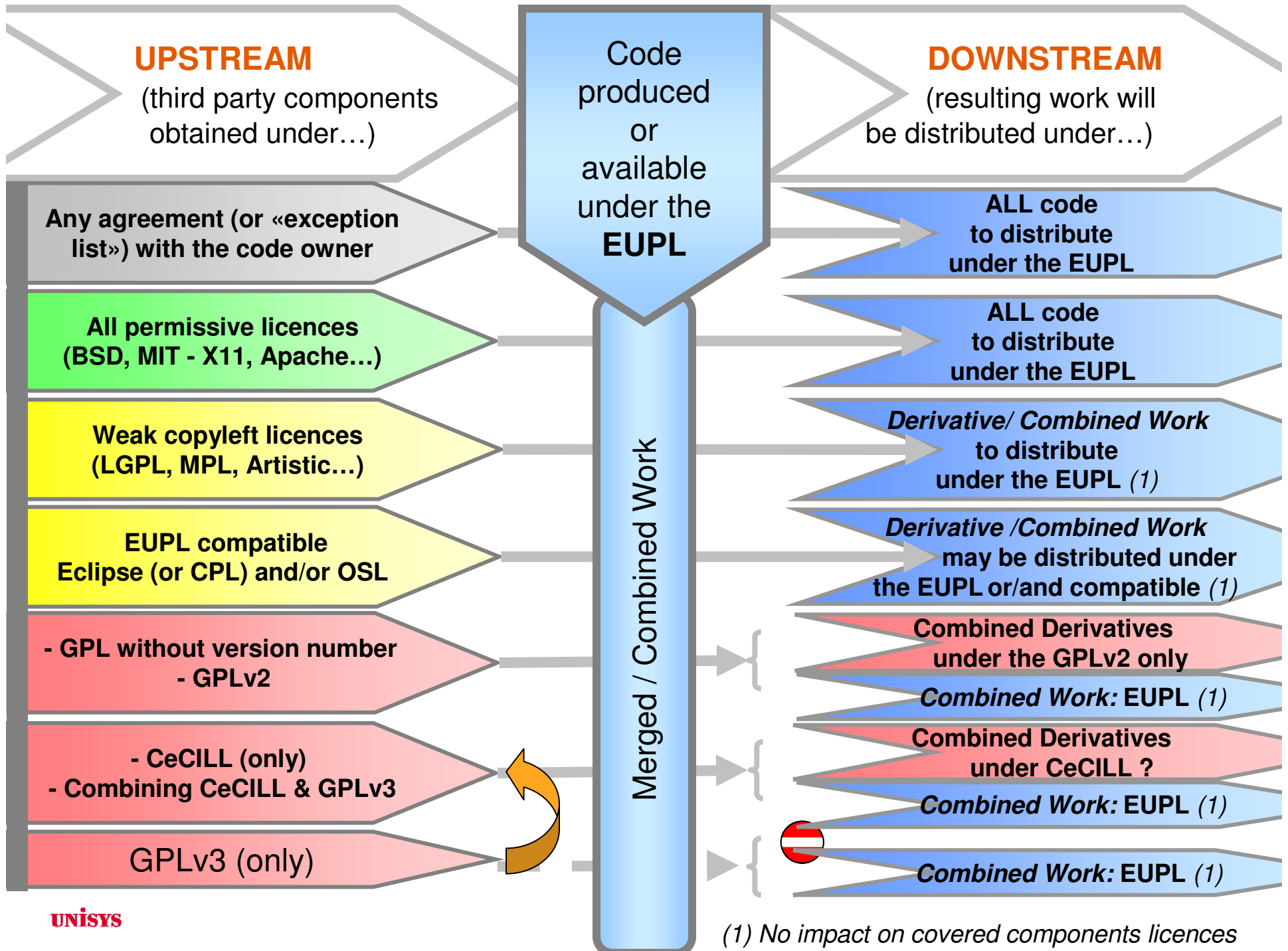


Based on the EUPL text, (and on copyright law) combined / collective works are not derivative.

The EUPL allows combining covered works with works covered by other F/OSS licences.

Combined works based on components covered by different OSI-approved copyleft licences can be distributed under any of these licences (without impact on the primary licence of each covered component)

**This dissipate FUD that is mostly damaging to F/OSS developers only!**



# Conclusions



- Still a long way for implementing the Malmö declaration, but practice runs faster than “the law”...
- The EUPL – supported by other EC actions like [www.osor.eu](http://www.osor.eu) is not a “legal curiosity” anymore.
- The EUPL could generate large benefits for the whole F/OSS community, by clarifying interoperability questions

*“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](ftp://ftp.cordis.europa.eu/pub/fp7/ict/docs/ssai/European_Software_Strategy.pdf)



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This presentation reflects the author personal opinions and does not commit Unisys, the European Commission or any other stakeholder

## Thank you.

**Patrice-Emmanuel Schmitz**

Legal expert

[www.osor.eu](http://www.osor.eu)

[pe.schmitz@gmail.com](mailto:pe.schmitz@gmail.com)

