



# GPL v3 or EUPL ? Alternative for Public Sector and their providers

*European Opensource Lawyers Event  
Paris, 24 September 2008*

# ID cards



**Name:** EUPL  
**Family:** Free/OSS licence  
**Gender:** Copyleft  
**Born:** 9 January 2007

**Nationality:** European (EU)  
**Parents©:** The European Community  
**Pregnancy:** 2+ years  
**Legacy:** IDABC assets & community  
**Fortune:** New in business  
**Elders:** None  
**Brothers:** None  
**Languages:** Polyglot (22 languages)  
**Social skills:** Public sector oriented  
Quite open to diversity

**Home:** [www.ec.europa.eu/idabc](http://www.ec.europa.eu/idabc)  
**Workplace:** mainly [www.OSOR.eu](http://www.OSOR.eu)  
**Future:** a few clarifications are expected (\*)



**Name:** GPL v.3  
**Family:** Free/OSS license  
**Gender:** Copyleft  
**Born:** July 2007

**Nationality:** American  
**Parents©:** Free Software Foundation  
**Pregnancy:** 18 months  
**Legacy:** 10.000+ active GPL projects  
**Fortune:** Project conversion 30% ?  
**Elders:** GPL v2 (1991), LGPL  
**Brothers:** LGPLv3, AGPLv3  
**Languages:** Unilingual (US English)  
**Social skills:** Eclectic  
Rather self-centered

**Home:** [www.fsf.org](http://www.fsf.org)  
**Workplace:** many  
**Future:** ensured, but controversial  
(may not replace GPLv2)

(\*) clarifications were openly discussed in meetings and in the OSI license review forum. EUPL v1.0 is still the only one “published” by the EC (= approved by Legal Service and published on IDABC).

The (\*) mark refer to clarifications that may be considered as the author’s opinion.

# The process of creating EUPL



- ❑ Study on possible copyleft licences for the CIRCA IDABC software (2004).
- ❑ First EUPL draft v. 0.1 as none of the above was fully convenient (2005).
- ❑ Public consultation via the IDABC web site (2005).
- ❑ Report consolidating all received remarks (2005).
- ❑ Second EUPL draft v. 0.2 as output of remarks.
- ❑ Study of the compatibility mechanism (2006) and improvement of specific provisions.
- ❑ Adoption of EUPL v. 1.0 in English, French and German (9. January 2007).
- ❑ Adoption of the EUPL by the College of the Commission (27 Commissioners, chaired by Mr. Barroso)
- ❑ Translation in 19 other European languages (end of 2007).
- ❑ EUPL Conference (lawyers) in January 2008 (\*)
- ❑ Discussion with OSI (\*) June 2008

# Main promotion channels:

## IDABC

## OSOR.eu

Official launch of **OSOR.eu** on 20 October 2008 (Malaga)

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### News&Studies

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## Welcome to the Open Source Observatory and Repository for European public administrations

by Marco Battistoni — last modified Sep 19, 2008 04:15 PM

The OSOR provides a platform for the exchange of information, experiences and FLOSS-based code for the use in public administrations. Your are invited to participate in this exchange and make use of the OSOR services:

- international news on Open Source topics;
- a repository with code and documentation on software for public administrations;
- a state-of-the art forge for working together.

The value and usefulness of the platform will increase with the number of contributors and of contributions that are offered for sharing. ...more

### Mission Statement

The OSOR.eu platform, and in particular the OSOR.eu Repository and the OSOR.eu Forge are aimed to support and encourage the re-use of publicly-financed Open Source Software developments that are of particular use for public administrations in Europe. ... more

### Open Source News

- EU: Close to a hundred European groups join Software Freedom Day** — by Gijs Hillenius — published on Sep 18, 2008 06:15 PM  
Close to a hundred European Open Source software organisations are participating in the next Software Freedom Day, held this Saturday September 20.
- MEPs petition European Parliament switch to Open Source** — by Gijs Hillenius — published on Sep 17, 2008 05:43 PM  
A petition to make the European Parliament switch its IT systems to Open Source has so far gotten the support of a hundred MEPs.
- NL: Survey shows government IT departments never heard of ODF** — by Gijs Hillenius — published on Sep 11, 2008 07:31 PM  
A survey of 154 public administrators in all levels of the Dutch

### Projects Tree

Find out more about FLOSS projects on the OSOR...

Getting involved in OSOR activities

Projects Tree

### Partners & Forges

- la.farga.cat projects
- COKS
- mancomun Centro de Referencia e Servicios de Software Libre
- ADULLACT
- MORFEO PROJECT
- softwareborsen forum for softwarebuilding & for sharing
- Observatorio Open Source CNIPA
- AdmiSource la forge d'ADELE
- fnprog
- iris libre
- G-Forja
- PROGRAMVERKET
- JUNTA DE ANDALUCIA
- berliOS

# Some statistics



## GPLv2



Wollmux and 8 other projects on OSOR.eu (Circabc, IPM, Eurostat)

90.000 projects on Sourceforge...  
Linux...  
The most accepted

?

- ❖ 15 titled Articles (1 – 15)
- ❖ Art. 1 = definitions
- ❖ 2.128 words
- ❖ **12.948** char.

- 13 untitled articles (0 – 12)
- No definitions
- 2.497 words
- **14.836** char.

- 18 titled articles (0 – 17)
- Numerous definitions
- 5.645 words
- **34.244** char.

The three licences have +/- the same objectives & functions.

# Philosophy



Preamble is not part of the licence

Ideology is not prominent

- ❖ “The utility of this licence is to reinforce legal interoperability by adopting a common framework for pooling public sector software”

Preamble is part of the licence

Defensive “ideology”

- licenses for most software “are designed to take away your freedom”...
- We want to “prevent other from denying” your rights...
- “Some devices are designed to deny users access...”
- “every program is threatened constantly by software patents”

# Scope



The original EUPL licence was established for IDABC software

The licence is written in general terms and could be used for derivative works, for other works and by other licensor

“Work” = any copyrighted work (mostly software)

A free, copyleft license for software and other kind of works

# Definitions



All grouped in Article 1,  
“Principles” rather than technology

- Licence
- Original work / Software
- Derivative work
- Source code
- Executable code
- Licensor, Contributors
- Licensee
- Distribution and/or
- Communication to the public

Principles are strong, however the  
licence left technical details to judges  
applying “copyright law in the country”

Numerous definitions (<> GPL v2)

Specific terminology

- propagate / convey /  
discriminatory patent license

Use of technical terminology

- “System libraries”, “Standard  
Interface”, “Major component”
- “Corresponding Source”
- “User Product”

References to the technical context:

- peer to peer, network server ...

GPLv3 wants to limit interpretation by  
entering in many details and trying to  
follow technological evolution.

# Distribution & Communication



Selling, giving, lending, renting, distributing, communicating, transmitting, or otherwise making available, on-line (\*) or off line, copies of the Work (= *the original or its derivative*)

Propagate = “anything that, without permission would make you liable for infringement”....  
(covers the European concept of “communication to the public”)

Convey = “kind of propagation that enables other parties to make or receive copies” (covers in fact downloads and physical distribution)

(\*) = providing access to its essential functionalities (= “software as a service”)

GPLv3 tries to cover other specific cases (i.e. conveying to contractors working for you, Anti-Circumvention...)

# Copyleft & New versions



Distribution or Communication to the public... **will be done under the terms of this Licence**

Or of a **later version** of this licence...(\*)

Commission may publish new versions so far this is required and reasonable (\*\*)

Exception: **Compatible licences**

(\*) unless the original licensor has distributed the original work “ONLY” under a specific version of the EUPL (\*\*)

(\*\*) without reducing the scope of the right granted by the Licence

“Convey” a work based on the Program... **under the terms of this License...**

Free Software Foundation may publish new versions “similar in spirit”

The Program may specify:

- a specific version
- “any later version”
- no specific “GPL” version = choice

The last option facilitates re-distribution of GPL works under “GPLv3 and any later version”

# Compatibility



**Upstream:** all non-copyleft.

**Downstream:** If the work is merged with other components that are licensed under:

- ❖ GPLv2
- ❖ OSLv2.1, v3
- ❖ Common Public License v1.0
- ❖ Eclipse Public License
- ❖ Cecill v2.0

Merged work can be distributed under the above licences.

GPLv3 is currently NOT (not yet?) on the list, which is published as appendix to EUPL

**Upstream:** all non-copyleft

**Downstream:** none (except “use with” the GNU Affero GPL)

Like GPLv2, the GPLv3 ignores downstream compatibility lists

# Merchantability



EUPL rights are **royalty-free**.

Additional agreements may charge a fee for support, warranty, contractual liability, other obligations or services.

This is clear.

GPL looks more “permissive”

- When we speak of free software, we are referring to freedom, not price.
- You have the freedom to distribute copies of free software (and charge for them if you wish)
- You may charge any price or no price for each copy that you convey, and you may offer support or warranty protection for a fee.

In the practice, GPLv3 provisions have a similar effect.

# Warranty and liability



- ❖ The original authors and each contributor warrant that they own copyright for their contribution.
- ❖ Otherwise no warranty because the work is “in progress”.
- ❖ Liability in case of wilful misconduct and/or damages to persons.
- ❖ Liability in so far statutory product liability laws apply.
- ❖ Otherwise no liability.

A realistic picture of the risks (that are never equal to zero)

- NO WARRANTY to the extent permitted by applicable law
- NO LIABILITY unless required by applicable law

A theoretical “catch-all protection” that may not be realistic and accepted by courts in Europe.

# Patents



- ❖ “The licensor grants to the licensee royalty-free, non exclusive usage rights to any patent hold by the licensor, to the extent necessary to make use of the rights...

Article 11 provide details and additional definitions:

- Explicit patent license is provided: a worldwide, royalty-free “patent license” under the “contributor’s essential patent claims” ...
- Cover specific case of “discriminatory” patent licenses

A principle: **“to the extent necessary”**...

Quite complex cases about “essential patent claims” and “discriminatory patent licenses”.

# Termination



- ❖ Automatic in case of any breach by the Licensee
- ❖ Without termination of sub licences

- Automatic in case of any breach by the Licensee
- Several sub-cases: a delay of 30 days or 60 days to reinstate the license
- Without termination of sub licences
- The “terminated” party cannot receive new license for the same material

The EUPL fixes a principle, while the GPLv3 imagines various cases, including a kind of “penalty” if rights have not be permanently reinstated

# Jurisdiction & Law



When the Commission is licensor,  
Court of Justice is competent  
(238 TEC Treaty)

When another party is licensor,  
court where he/she resides is  
competent

Applicable law: Country of the  
Licensor, if EU Member.  
Belgium in other cases

No clear provisions on this topic

i.e: “If the disclaimer of warranty and  
limitation of liability provided above  
cannot be given local legal effect  
according to their terms, reviewing  
courts shall apply local law that most  
closely approximates an absolute  
waiver of all civil liability in connection  
with the Program”

Trying to predict jurisdiction and law  
(which must be the law of an EU  
Member State).

# Linguistic versions



**22 versions** are currently published.

The European Commission **may publish** other linguistic versions.

(\* **All linguistic versions** of the EUPL Licence, approved (=published) by the European Commission, **have identical value**. Parties can take advantage of the linguistic version **of their choice**

In EU, consideration for linguistic diversity is seen as an obligation. No prominent risk in translating EU legal corpus.

The sole official version is the **US/English version**.

- Official translations would be difficult and expensive
- Error could be disastrous for the whole free software community

Linguistic diversity is perceived as a major risk.

# Conclusions



- ❑ The EURL and the GPLv3 have similar “functions” but are very different in spirit and writing.
- ❑ GPLv3 is strongly under influence of “fighting against” threats
- ❑ GPLv3 is complex, hard to read (and nearly 3 times longer), provides many definitions, technical details and “use cases” on some points (difference between propagation–communication and conveying–distributing, patents etc.).
- ❑ In this respect, GPLv3 may be a useful instrument for specialists facing interpretation of a specific issue.
- ❑ GPLv3 is laconic on other points (warranty / liability) or silent (the use of other languages, applicable law, jurisdiction)
- ❑ If you have been familiar with the GPLv3 elaboration process, then you will probably better understand its provisions.
- ❑ If you are a new-comer to OSS licensing and try to understand obligations and risks, it is more recommended to read the EURL in your language than the GPLv3...
- ❑ The question of introducing the GPLv3 in the EURL compatibility list is still open.