

Recommendations concerning the EUPL v.1.1

When combining the modification proposals resulting from the OSI discussion with the propositions already resulting from the 25 January Workshop organised (with 50 experts) by the European Commission, we notice a high degree of convergence: in two cases (so far), the modification is specifically resulting from OSI discussion (see the mentions “**This specific clarification is a result from OSI discussions**”).

The number of proposed modifications to the text of the EUPL is very limited (seven). The proposed changes are useful clarifications and never reverse or change the meaning of any EUPL v 1.0 provision.

The exhaustive list of the proposed modifications is provided hereafter (added parts are **bold / underlined**, replaced parts are **~~red / strikethrough~~**)

1 – last paragraph

"- *Distribution and/or Communication*: any act of selling, giving, lending, renting, distributing, communicating, transmitting, or otherwise making available, on-line or off-line, copies of the Work **or providing access to its essential functionalities** at the disposal of any other natural or legal person."

Rationale: this is to clarify that the EUPL covers also the activity of on-line “Application Service Provider” (or “Software as a service”). The idea is already present in # 2 (*communicate to the public, including the right to ...**perform publicly, as the case may be, the Work***). Therefore, the new # 1 formulation is consistent with the existing # 2 and is in line with the request from the 25 January workshop participants to clarify this point expressly in the definitions of # 1.

5 – Copyleft clause:

"If the Licensee distributes and/or communicates copies of the Original Works or Derivative Works based upon the Original Work, this Distribution and/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."

Rationale: By adding the terms “**or of a later version of this Licence**” it is clear that any Work distributed under the EUPL v. 1.0 (for example) may be re-distributed, even unmodified, by any interested stakeholder under the EUPL v. 1.1 or later (for example). This replaces the previous last sentence of # 13 [:"~~The~~

~~new version of the Licence becomes binding for You as soon as You become aware of its publication."~~] (which had a similar effect). Thanks to this simplification, it will not be needed to add later versions of the EUPL in the Annexe (the Compatibility list).

By adding "unless the Original Work is expressly distributed "ONLY" under this version of the Licence." the Licensor control on the licensing terms that are applicable on his Original Work is preserved: upgrade to the later EUPL version is the default, however not an obligation (for example, if the software is licensed "ONLY under the EUPL v 1.1", it can not be re-licensed under a later version without the authorisation of the original author). **This specific clarification is a result from OSI discussions**

6 – last paragraph

"Each time You accept the Licence, the original Licensor and subsequent Contributors grant You a licence to their contributions to the Work, under the terms of this Licence."

Rationale: this is to simplify the previous formulation, which was: "~~Each time You, as a licensee, receive the Work, ...~~". "Receiving the Work as a Licensee" means "accepting the Licence". The new formulation is better because it is simpler and because it refers clearly to # 10 "Acceptance of the Licence" where this process is described

11 – Information to the public

"In case of any Distribution and/or Communication of the Work by means of electronic communication by You (for example, by offering to download the Work from a remote location) the distribution channel or media (for example, a website) must at least provide to the public the information requested by the applicable law regarding the **identification and address of the** Licensor, the Licence and the way it may be accessible, concluded, stored and reproduced by the Licensee."

Rationale: the EUPL refers to the applicable law, however the EUPL should not "predict or provide" the content of this applicable law (maybe requesting the identification and the address, but possibly also other information).

13 – paragraph 3

"The European Commission may publish other linguistic versions~~put into force translations~~ and/or **binding** new versions of this Licence, so far this is required and reasonable, without reducing the scope of the rights granted by the Licence. New versions of the Licence will be published with a unique version number."

Rationale: this precision reflects the original intention of the European Commission. It is useful because the exact meaning of the term “reasonable” may appear too vague.

For new versions of the EUPL, the term "publish" is more appropriate than "put in force ... binding versions", because the EUPL is a contract between parties and not a part of the general "Community Law". **This specific clarification is a result from OSI discussions**

13 – paragraph 4

" All linguistic versions of this Licence, approved by the European Commission, have identical value. Parties can take advantage of the linguistic version of their choice."

Rationale: This new paragraph reflects the original intention of the European Commission when providing (currently) 22 linguistic versions of the EUPL. However, this was not yet written in the EUPL. It addresses questions like this one: “If Licensees contract under the EUPL based on its English version, can a Licensor restrict their rights based, for example, on the Hungarian version (in the case this one would be more restrictive)?”

~~"The new version of the Licence becomes binding for You as soon as You become aware of its publication."~~

Rationale: The previous last sentence of # 13 is replaced by the addition done in # 5, which presents several advantages:

- Replaced formulation was perceived as a “unilateral contract change”;
- Date and reality of “becoming aware” and accepting was uncertain;
- Replaced formulation had no impact on the relevant application’s source code and documentation (that may still refer to the previous version). At the contrary, the new formulation of # 5 allows any stakeholder to insert the reference to the new version in the source code and documentation, and to re-distribute it under the new version as from a certain date, without impacting relationships with previous recipients. However, the new formulation of # 5 reserves an “opt-out” for the original Licensor, who can ensure that no new version will become binding without his/her agreement.