

EUPL v 1.1 The European Commission's Open Source Licence

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... why creating the EUPL... IDABC's initiative



▪ EUROPEAN COMMISSION

> DG DIGIT (Directorate General for Informatics)

- >IDABC program (Interoperable Delivery of European eGovernment Services to public Administrations, Businesses and Citizens)
 - to encourage and support the delivery of cross-border public sector services to citizens and enterprises in Europe, [A -> C & E]
 - to improve efficiency and collaboration between European public administrations and [A -> A]
 - to contribute to making Europe an attractive place to live, work and invest.
- IDABC promotes FOSS
 - European administrations develop software that could be re-used : why should the tax-payer pay 2 times for the job? => opportunity
 - The development and cooperation methods, as well as the legal framework (licences), fit perfectly well for trans-border cooperation between administrations
 - Opening the sources is likely to increase the quality of software (review by other specialists, competition,...)
 - FOSS is the key feature for interoperability, open standards developments, liberty of choice,...

- **IDABC has set up and upkeepes the Open Source Observatory and Repository (OSOR)**
 - Promotes good FOSS practices in public administrations
 - Presents facts and references (Case studies / expert reports / news /...)
 - Hosts a Forge, forums, etc.

 - **IDABC develops software applications :**
 - **CIRCA** (Communication and Information Resource Centre Administrator) = Groupware for sharing information
 - **Elink** = middleware (ensuring communication and mediation between heterogeneous applications)
 - **IPM** (Interactive Policy Making) = Internet Based Tool allowing the administration to receive the citizen's feedbacks on policies, and to organize public consultations.
- ⇒ **TO BE DISTRIBUTED UNDER WHICH FLOSS LICENCE ?**

▪ Commission's main criteria

- **Copyleft licence** (distributed modif. must remain OS)
- A licence that is valid, applicable and secure **under EU law**
=> a licence that the Commission could modify and adapt
- A licence that can be translated into the **EU languages**

NOTE : licences are copyrighted => the author's authorisation is needed in order to modify or translate them

⇒ **Only practicable solution : create its own licence**

⇒ **EUPL**

- **Reaction of the local administration :**

Good idea !

BUT

please provide for the EUPL's compatibility with other copyleft licences (mainly GPL 2)

- **OUTSTANDING elements of the EUPL**
 1. Translated into **22 European languages**
 2. Use of **European law concepts**
 1. **Copyleft licence**
 2. **“Affero-like” licence**
 3. **Compatible with some other copyleft licences**
 4. **“Certified OSI” OSS licence**

1. EUPL : the only FOSS licence existing officially in 22 languages

- Translated by the Commission's translation services
- Checked by national experts (lawyers)

BG	EUPL v.1.1 - Преамбюл	EUPL v.1.1 - ЛИЦЕНЗ
CS	EUPL v.1.1 - Preambule	EUPL v.1.1 - Licence
DA	EUPL v.1.1 - Forord	EUPL v.1.1 - Licens
DE	EUPL v.1.1 - Präambel	EUPL v.1.1 - Lizenz
ET	EUPL v.1.1 - Preambul	EUPL v.1.1 - Litsents
EL	EUPL v.1.1 - Προοίμιο	EUPL v.1.1 - Άδεια Χρήσης
EN	EUPL v.1.1 - Preamble	EUPL v.1.1 - Licence
ES	EUPL v.1.1 - Preámbulo	EUPL v.1.1 - Licencia
FR	EUPL v.1.1 - Préambule	EUPL v.1.1 - Licence
IT	EUPL v.1.1 - Preambolo	EUPL v.1.1 - Licenza
LV	EUPL v.1.1 - Preambula	EUPL v.1.1 - Licence
LT	EUPL v.1.1 - Preambule	EUPL v.1.1 - Licencija
HU	EUPL v.1.1 - Preambulum	EUPL v.1.1 - Licenc
MT	EUPL v.1.1 - Preambolu	EUPL v.1.1 - Licenzja
NL	EUPL v.1.1 - Inleiding	EUPL v.1.1 - Licentie
PL	EUPL v.1.1 - Preambula	EUPL v.1.1 - Licencja
PT	EUPL v.1.1 - Preâmbulo	EUPL v.1.1 - Licença
RO	EUPL v.1.1 - Preambul	EUPL v.1.1 - Licenta
SK	EUPL v.1.1 - Preambula	EUPL v.1.1 - Licencia
SL	EUPL v.1.1 - Preambula	EUPL v.1.1 - Licenca
FI	EUPL v.1.1 - Johdanto	EUPL v.1.1 - Lisenssi
SV	EUPL v.1.1 - Motivering	EUPL v.1.1 - Licens

⇒ Massive work

⇒ One of the main added values of the EUPL from the administrations' point of view

⇒ Any version of the licence has equal value : it creates an incentive to share amongst different national administrations.

2. Licence adapted to EU Law

- Use of **EUROPEAN copyright law concepts**
 - PATRIMONAL (economical) RIGHTS
 - *reproduction & modification*
 - *communication to the public*
 - *distribution*
 - >< **Ex.: BSD** : ***“Redistribution and use are permitted”***
 - GPLv2** : ***“Activities other than copying, distribution and modification are not covered by this License; they are outside its scope”***
- MORAL RIGHTS are dealt with in a specific provision

“In the countries where moral rights apply, the Licensor waives his right to exercise his moral right to the extent allowed by law in order to make effective the licence of the economic rights here above listed.”

- Compliance with / implementation of other EUROPEAN legislations
 - Such as the E-COMMERCE directive...

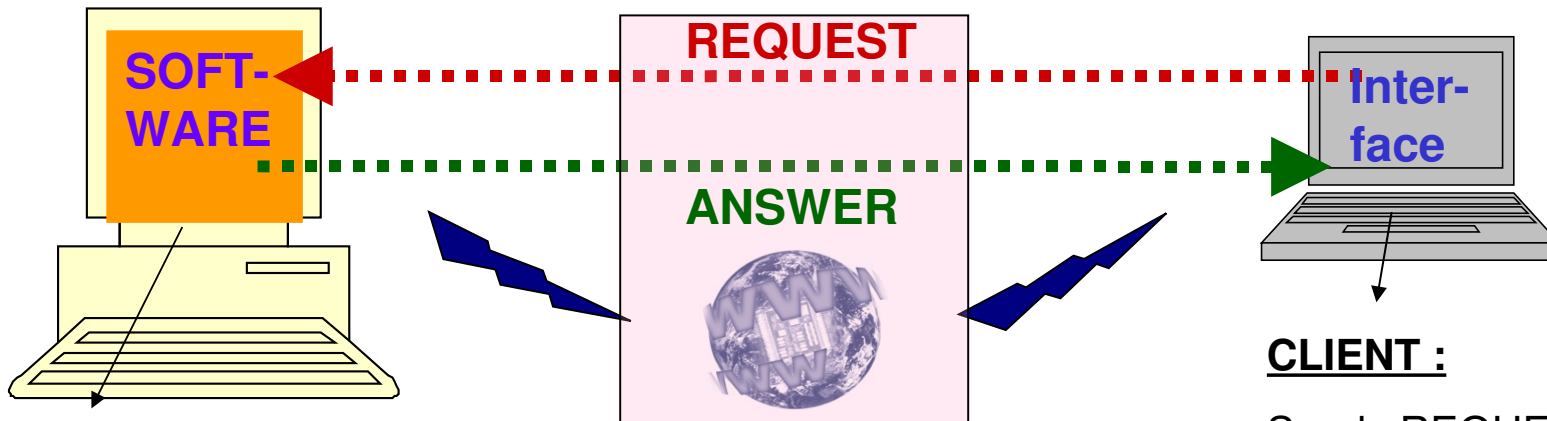
- Clauses *influenced* by Member state's law (no EU harmonisation yet)
 - Disclaimer of liability
 - No warranty clause
 - Acceptation mechanism

3. Copyleft licence

- **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.
- **Derivative Works:** the works or software that could be created by the Licensee, based upon the Original Work or modifications thereof. **This Licence does not define the extent of modification or dependence on the Original Work required in order to classify a work as a Derivative Work; this extent is determined by copyright law.**

4. What about “Software as a Service” or “Application Service Provision” => EUPL = “Affero-like” licence

- ASP / SaaS : ex. Google Services



SERVER :

Hosts the PROGRAM
Runs the PROGRAM
Answers the Requests

No distribution / No communication of the software
It's a “communication with a software”

CLIENT :

Sends REQUESTS
Receives THE RESULTS
(generally through a Internet “website-type” interface)

- GPL3** : copyleft trigger => “distribution” or “enabling others to receive copies” => **the GPLv2’s “loophole” has not been closed**
=> **Affero GPL3** : copyleft extends to “interacting with the software remotely through a computer network”

=> EUPL

- **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.** (*add-on of v. 1.1*)

⇒ The Copyleft Trigger encompasses ASP / SaaS schemes

⇒ Even when there is no “distribution” or “communication to the public” as defined in EU law, using a modified version of an EUPLed software as an ASP/SaaS entails the obligation to provide access to the source code of such version and to license it under EUPL.

Note : on the “distribution” concept : cfr. “freebox” case (FR)

5. Compatibility Clause

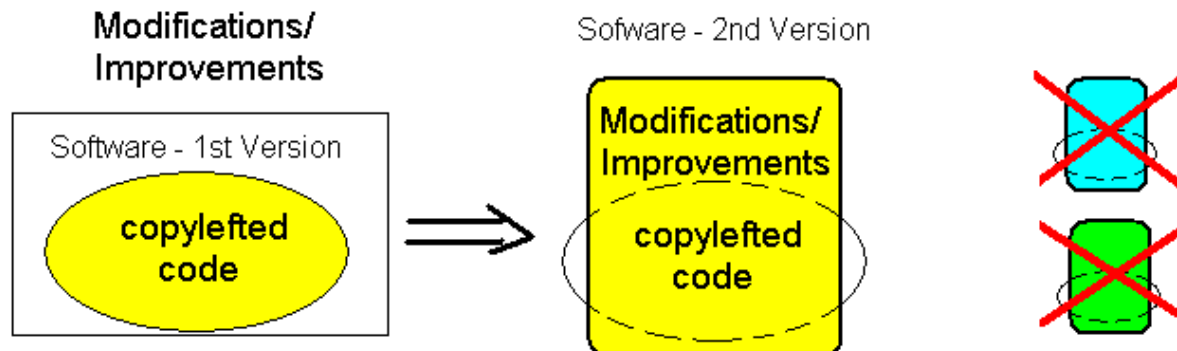
- **Compatibility clause:** If the Licensee Distributes and/or Communicates Derivative Works or copies thereof based upon both the Original Work and another work licensed under a Compatible Licence, this Distribution and/or Communication can be done under the terms of this Compatible Licence. For the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

- **Appendix (Compatible Licences List)**
 - *General Public License (GPL) v. 2*
 - *Open Software License (OSL) v. 2.1, v. 3.0*
 - *Common Public License v. 1.0*
 - *Eclipse Public License v. 1.0*
 - *Cecill v. 2.0*

Copyleft = main source of incompatibility problems




- Copyleft can be defined as the effect thanks to which FLOSS (Free / Libre / Open Source Software) remains Free / Libre / Open Source.
- **NB : SOME FLOSS licences are Copyleft / SOME ARE NOT**
- This copyleft effect is reached by introducing a **copyleft clause** in the FLOSS licence, which, in general, reads more or less as follows:

“ You are free to modify or merge the software with another one, but if you redistribute the modified or merged version of the software, this redistribution must be done under the same licence”



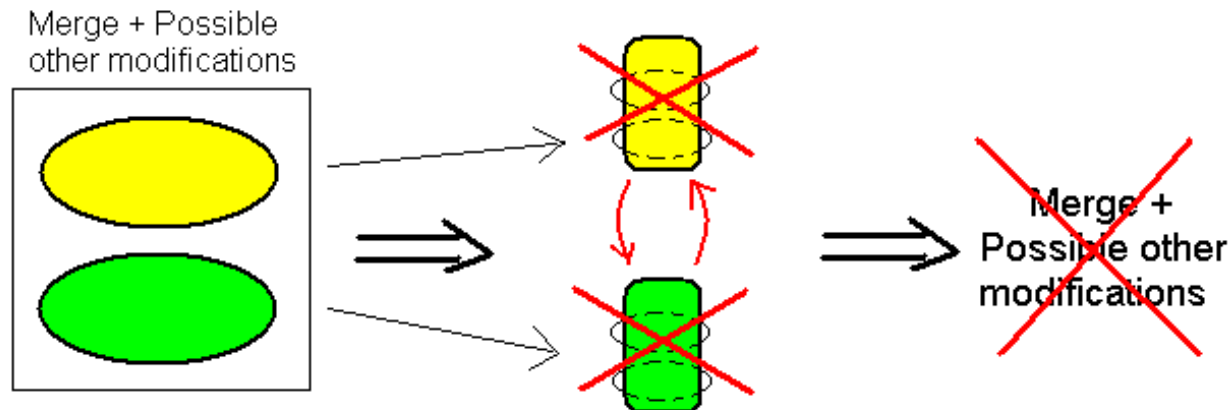
NOTE : there are different types of “copyleft” depending on their extent.

NOTE2 : there are different types of “incompatibility” as well (which are not due to copyleft, but to other incompatible clauses)

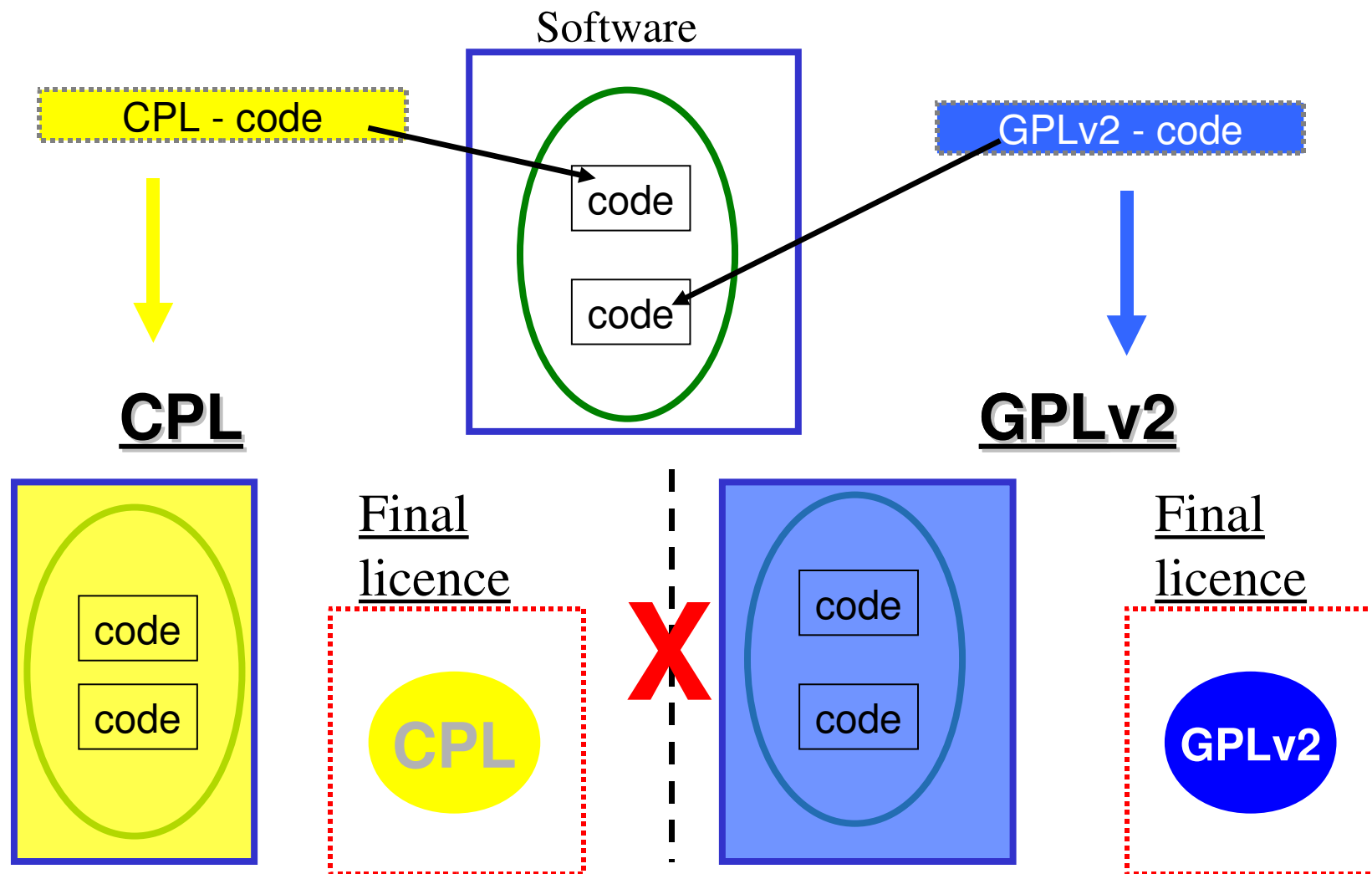
-  Copyleft licence A
-  Licence X
-  Licence Y

Copyleft Incompatibility

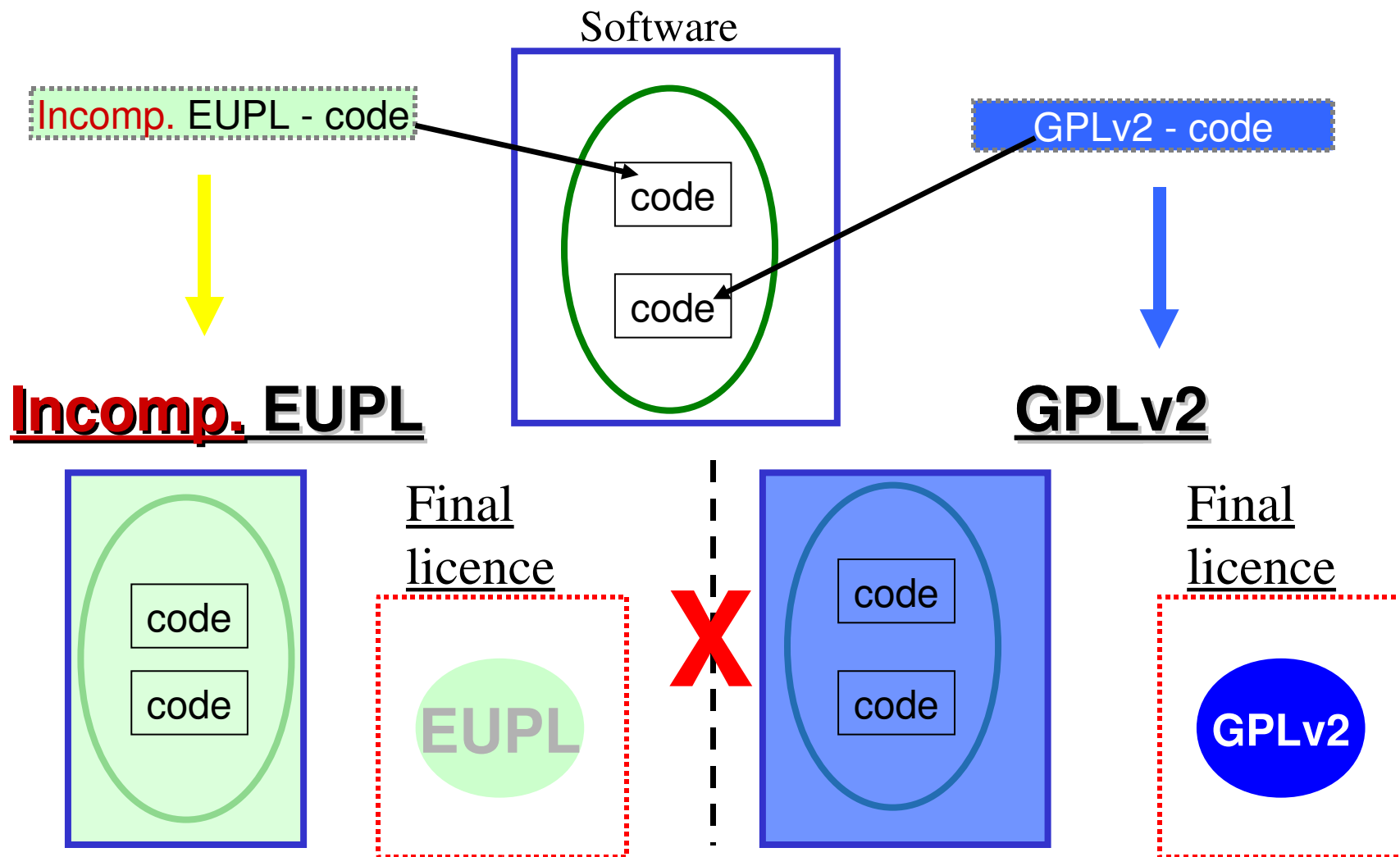
- **Merging/combining** some code with copyleft licensed code usually means that the **copyleft licence is predominant**
 ⇒ The result of the merger must be licensed under this copyleft licence
- **Copyleft Incompatibility** is due to the fact that each one of the copyleft licences, under which the codes to be merged / combined are licensed, obliges the licensee to redistribute the result under itself :



Ex.: copyleft incompatibility



Ex.: if EUPL had no compatibility clause





EUPL : Compatibility Clause



- The Effect of the EUPL Compatibility clause

⇒ When a licensee creates a Derivative Work based upon **both** EUPLed code and another software licensed under a Compatible Licence

⇒ **EUPL steps aside**

⇒ **the “merger” can be distributed under the compatible licence**

Updating the Compatibility List

- **Proposed criteria for possible additions to the list**
 - Practical / minimal **use** of the licence
 - **Recognized Free / Open Source Software licence** (either by the FSF or the OSI)
 - **“strong” (meaning “not limited”) copyleft licence**

AND

- + a **public administration** of a Member State of the European Community **or developers partially or totally funded** by the European Community or one of its Member States **make use of this licence** (as licensee or as licensor) for existing code

(and express the willingness **either**

- to include this code, or part of it, with or without modification, inside EUPLed code, **or**
- o to include EUPLed, with or without modification, code inside the code under this license.)

=> UPDATING BY INCLUDING GPLv3 ?

6. OSI certification

- **Open Source Initiative = U.S. Institution**
 - ⇒ **Open Source Definition (10 criteria)**
 - ⇒ **Open Source Certification**

⇒ **EUPL certified since March 2009**



- ⇒ **NEW “start” for EUPL**
- ⇒ **Certified Internationally (outside EU)**



EUPL's use and possible impact



- EUPL have some **unique features** and is especially **adapted** for use in Europe
- EUPL is a newborn licence, created and used by one of the most important administrative body : this **official move** towards FOSS licensing should not be underestimated.
- EUPL : firstly meant to be the “European administrations’ licence” (**not only EU admin. but national/local admin. as well**)
 - ⇒ Important for the administrations’ service providers
 - ⇒ Could play an interesting role in the framework of **public procurements** (national or EU)
- European companies start to show interest in EUPL as well



Thank you for your attention !

(do not hesitate to ask me about “Cellavi” during the break ☺)



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