Translation of EUPL v. 1.0 into the official languages of the European Union

Report on the Comments received by IDABC

V 1.1 - January 2008

Authors: S. Dusollier, Ph. Laurent, J.-P. Triaille, P.-E. Schmitz, R.A. Ghosh

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Introduction

Context

On 9 January 2007, after two years of studies and preparation[1], the European Commission has approved the EUPL (European Union Public Licence), a « Free / Libre / Open Source Software » (FLOSS) licence. This licence will now be made available for all Member States. The first beneficiaries should be public administrations (at national, regional, municipality level, public services or universities) when deciding to distribute and to mutually share their software under a Free, Libre or Open Source licence[2].

Why a new EUPL software licence is needed when about 100 open source, often not compatible, licence models exist?

There are several reasons that render EUPL a unique instrument:

- For the first time, a public administration of the size of the European Commission publishes (by an official decision of the European Commission College) an open source licence to use it in order to distribute some of its own software. Without generating any obligation, this should and will be an exemplar for other organisations in Europe.

- For the first time, the licence text will have « original » value in all official languages of the European Union. This is a unique acknowledgement of the linguistic diversity of Europe. The majority of other licence texts produced in North America consider translation as informative only, without a binding value.

- For the first time, the text has been and will be analysed taking into consideration the Law of multiple Member States and the European Law. This, concerns the specific copyright terminology and the provisions related to information, warranty or liability exclusion respecting consumer's rights. This is also related to applicable law and competent court, as the EUPL guiding principle is based on trust towards Member States' parliaments and judges without restrictions or exceptions.

- Last, an open source licence was rarely written with such an open mind, allowing developers to reduce the existing incompatibility barriers between the various « copyleft » licences. The EUPL v 1.0 communicates a first list of compatible licences and authorises the re-distribution of derivated works under the compatible licence of the « added/merged component »: GPL V2, Cecill V2.0, OSL V2.1 or 3.0, Common Public Licence V 1.0, Eclipse Public Licence V 1.0. Should the licensee's obligations under the compatible licence

[1] These studies are published on the European Commission's IDABC Web Site: http://ec.europa.eu/idabc/en/document/6523

[2] In general, this means that the licence is compliant with the 10 principles of the Open Source Definition: http://www.opensource.org/docs/definition.php

conflict with EUPL's obligations, the obligations of the Compatible Licence shall prevail. If other similar licences could be inspired by this open mind, the « free licence conflicts » and resulting incompatibilities would rapidly end.

The EUPL, although not compulsory, has actually a very important role to play when licensing Public Sector software.

The Translation of the EUPL

The text of the EUPL is short consisting of 15 articles. Before the process of translation, coordination and quality control, it was already translated and officially approved by the European Commission in English, French and German.

Translation drafts have been written by the European Commission's translators in the following other languages: Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish.

The revision, correction and commenting on these drafts on the basis of the three already approved versions has been done by a selection of "Intellectual property rights lawyers". The English version had to be used as main reference, while the two other official French and German versions were provided for information, observations and interpretation purpose, if needed.

The European Commission has appointed its OSOR contractual partner in the role of "Coordinator" to distribute the work, comment results and ensure the quality control of the revision and contact active and experienced lawyers in intellectual property rights in the relevant Member States (hereafter, the "experts") .

These persons could be in the future motivated to become EUPL experts or "contact points": a scientific reference concerning EUPL, for example for analysing it with students or for answering consultancy requests from their national administrations.

The Process of Quality Control

The EUPL translation quality control process was organised as follows:

1. The European Commission translation services have drafted EUPL v 1.0 translations in all relevant languages.

2. Through the project Coordinator, two experts per relevant country have been contacted. The Coordinator has put the experts in contact each other, in order that they come to a common revision.

3. The experts have received:

    - The three already approved versions of EUPL (EN, FR, and DE). One of these versions (EN) is the original reference version for all translations.

    - A translation in their language (the draft written by the European Commission services) – version 0.1.

4. The two experts have coordinated with a revised version. The purpose was that this updated version should remain as close as possible to the original reference version (EN) and therefore it was important to avoid any non imperative innovation. Indeed, to provide the same meaning and value in all languages, possible corrections, if any, should be limited to style or to the selection of the most appropriate terminology.

    All modifications, tracked electronically, were complemented with English written comments when applicable, and organised in four groups.

    1. "***1. Formal / presentation correction***" (for example addition of punctuation, accents, correction of spelling) ; For this group (the most important) no specific mention or comment was requested.
    2. "***2. Terminology***" (replacing a term by another, when appropriate. For example, in the English version the term "physical person" was once replaced by "natural person") ;
    3. "***3. Content: xxx"*** (justification for a more substantial change to the submitted version).
    4. "***4. Comment: yyy"*** (a legal comment if appropriate or useful) these comments will be collected and presented (author name and content) in a global report that will be published at the occasion of the EUPL conference at the end of 2007

    Modifications 1 & 2 were done without detailed justification.

For modification of type 3 only, a comprehensive justification "***xxx***" had to be provided, in English, in the documents.

Type 4 Comments were "all useful observations or questions" that may not be directly related to translation, and where sometimes "personal" to the author (they may, but do not need to be shared by the two experts).

5. After the revision by the two experts, the translated versions are to be reviewed once again by the Coordinator team and by the Commission. The current report groups the various comments and reactions from the Coordinator team. If a correction or a comment requires additional explanations, there will be a discussion with the expert.

6. The European Commission reserves the right to consult another expert before taking its decision on the final text of all linguistic versions of the EUPL In all circumstances, the European Commission will stay the sole « responsible author » of the EUPL text. The expert contribution will have a complementary value (legal theory / writing of jurist) without producing for him/her any liability regarding the EUPL text or its application.

List of experts

National experts

The list national experts is as follows, (per processed language):

Language	*Code*	*First name*	*Name*	*Abbreviation*
Bulgarian	BG	Veni	Markovski	BG-VM
		Alexander	Pachamanov	BG-AP
Czech	CS	Ondrej	Knebl	CS-0K
		Hana	Heroldova	CS-HH
Dansk	DK	Mads Bryde	Andersen	DK-MA
		Thomas	Riis	DK-TR
Estonian	EE	Viive	Näslund	EE-VN
		Heiki	Pisuke	EE-HP
Greek	EL	Dionyssia	Kallinikou	EL-DK
		Marina	Markellou	EL-MM
Spanish	ES	Maria José	Iglesias	ES-MI
		Andrés	Guadamuz Gonzalez	ES-AG
Finnish	FI	Samuli	Simojoki	FI-SS
		Mikko	Valimaki	FI-MV
Hungarian	HU	Balázs	Bodó	HU-BB
		Aniko'	Gyenge	HU-AG
Italian	IT	Giuseppe	Maziotti	IT-GM

		Marco	Ciurcina	IT-MC
Lituanian	LT	Agne	Vilutiene	LT-AV
		Mindaugas	Kiskis	LT-MK
Latvian	LV	Ieva	Berzina-Andersone	LV-IB
		Guntis	Lauskis	LV-GL
Maltese	MT	Richard	Camilleri	MT-RC
		Antoine	Camilleri	MT-AC
Dutch[3]	NL	Kamiele	Koelman	NL-KK
		Martijn. W	Scheltema	NL-MS
		Lucie	Guibault	NL-LG
		Ashwin	van Rooijen	NL-AR
Polish	PL	Maciej	Barczewski	PL-MB
		Aleksandra	Auleytner	PL-AA
Portuguese	PT	Alexandre Liborio	Dias Pereira	PT-AD
		Cesar	Bessa Monteiro	PT-CB
Romanian	RO	Bogdan	Manolea	RO-BM
		Romeo	Nicolescu	RO-RN
Slovakian	SK	Daniela	Gregusova	SK-DG
		Michaela	Jurkova	SK-MJ
Slovenian	SL	Jure	Levovnik	SL-JL
		Ozbej	Merc	SL-OM
Swedish	SE	Mathias Torbjörn	Klang	SE-MK
		Viveca	Still	SE-VS

Project Team Experts (PTE)

(alphabetical)

First Name	Name	Organisation	Abbreviation
Rishab	Aiyer Ghosh	United Nations University / Merit	RAG
Severine	Dusollier	FUNDP – CRID	SeD
Philippe	Laurent	FUNDP – CRID	PhL
Patrice-Emmanuel	Schmitz	Unisys	PES
Jean-Paul	Triaille	De Wolf & Partners	JPT

Severine Dusollier, Philippe Laurent and Jean-Paul Triaille are all nember of the CRID (Centre de Recherches Informatique et Droit)[4] which is a research centre of the "Facultes Universitaires Notre Dame de la Paix" in Namur (Belgium). When these members have commented translations and comments collectively, the "CRID" abbreviation is mentioned.

When comments are unanimous for all the Project Team Experts, the abbreviation PTE us used.

[3] Dutch experts are over-represented because we received un-expected contributions from more than 2 lawyers. Regarding the quality of their contributions, it was fair to consider all of them, by exception

[4] http://www.fundp.ac.be/facultes/droit/recherche/centres/crid/

Remarks about this document

This document regroups national experts' comments of type 3 (content) and 4 (comment), according to the definition in page 3 of the Memorandum of Understanding.

We have added France as we received specific question from one expert who is currently investigating the EUPL. We have also added – in the Dutch section – comments received from the Institute for Information Law, Amsterdam. These two additions are for information (not part of the translation revision process), however it could provide ideas and material for the Workshop discussion that is planned at the conclusion of the translation process.

For each language there is a table summarising comments and corrections, and each member of the Study expert team ("CRID" for Severine Dusollier, Jean-Paul Triaille and Philippe Laurent collectively) has fill out the column "comments" on the right, if applicable.

In 7 cases, CRID has elaborated "CHANGE PROPOSALS" to the text of EUPL v 1.0. As these proposals would impact the text of the already approved versions (EN, FR, DE) and, if adopted, will request a further translation round, these points will be more especially subject to discussion.

Principal questions, Workshop Preparation

For the preparation of the Workshop, the received comments and principal ideas will be grouped by "**subject matter**" and the outcomes /minutes of the discussion (on the possible cases where it could be opportune to modify the EUPL text) will be consolidated in a **comprehensive report**.

The subject matters will be organised following the logical order of EUPL provisions, while grouping matters where it was relevant (i.e. "Warranty and liability" or "Jurisdiction and applicable law").

When submitting their "revision of the draft translation", the national lawyers listed above have not always requested for content modification (type 3) or submitted comments (type 3 or 4): these are mainly present in 9 of the proposed revisions.

In general, issues have been raised by several practitioners, for example:

- The scope and intensity of the **liability** and **warranty in provision 6, 7 & 8**
- The exact meaning and scope of the "**Communication to the public**" and its application to specific cases (i.e. allowing to use an application via the internet network)
- The application of new EUPL versions (**unilateral contract changes**) to existing licensees

Headers / Footers

The Header of English version is:
EUPL v.1.0 –EN

The Footer of English version is

© European Community 2007 page 1 of …

This should be reproduced in all licences, by translating only the terms highlighted above (with a yellow background). This was not done in all versions: language code was missing or wrongly "EN" in some translations (BG DKEL ES ET FI IT SL)

The acronym "EUPL" should stay "as is" in all versions (the use of "EUL" in HU version must be a typing error)

The version number must currently stay at "v. 1.0" in all versions (the to "v 2.0" in SL version is a misunderstanding)

The following small errors where present at Footer level:

Footer is missing or partially missing in versions BG and EL
Footer indication of pages is not complete in IT, LT
The English wording "Page 1 of 7" is not yet translated in version HU, SL

Title & introduction

Version number

SE-MK suggest to add "or later" (in Swedish "eller senare") to the mention that the Work was licensed under EUPL v. 1.0.

Rationale is that "The license is designed in such a way as to include the ability to update. Article 13 mentions future versions of the license. It would be an important signal to include this information here with the addition "(or later)" in Swedish "(eller senare)".

The issue of future versions exists indeed (see hereafter under §13). However version number should stay precise as the licence is a contract. The commitment to accept new versions (§13) is based on trust (that these new versions are made to improve EUPL reliability and not to change the licence rights or objectives), but acceptance of later condition by licensors (other than the EC) should be "materialised" by the fact these licensors will update their web site and communicate the higher number. A good

idea is to add any new EUPL version number in the "list of compatible licences" for all versions. For example as follows (assuming v 2.0 is the last version):

EUPL v 2.0 (compatible licence for EUPL v 1.0 and EUPL v 1.1)

This does not modify the text of the licence "contract" but validates the switch to the new version, as the licence contract as it is entitles the European Commission to enlarge the list of compatible licences

They are questions regarding the scope of the licence: EUPL applies to the Work which is provided under the terms of this Licence. CS-OK comments that "**In accordance with Czech law, the Work itself is not provided (i.e. transferred), it is the right to use that can be granted only. The English version may then be a little misleading in this sense".**

According to PhL : a license in the strict sense of the term deals only with IP rights. However, it is also a contract, in which more or less anything could be provided (including the obligation to deliver the Work itself). NB: GPL 2 is known for not forcing explicitly the licensor to provide the code… only the licensee has such obligation.

For PES, the FLOSS licence gives more than just the use like other IPR licences: the work itself is provided with the right to modify it, and the author waives his right to impose the preservation of the "integrity" of the Work (by no code removal, modifications, extensions, merge) which could be his/her moral right in other cases. The FLOSS licence is therefore very specific.

Definitions (§1)

There is a frequent remarks that in some translations originally provided by the Commission, the initial "UPPERCASE" marking the "§1 defined terms" that are in *italic* in §1 (*Work*, *Licence*, *Licensor* etc.) were missing. Most of the National Experts have corrected, because they understand the importance of such an uppercase.

As CS-x rightly reported, the word "or" is not a term and should not be in *italic* in the English version v. 1.0 :

The Original Work **or** *the Software*: …
Distribution **and/or** *Communication*

This was corrected in EUPL v 1.0 –CS and EL
Same correction should be done in DK, ES, ET, FI, HU, IT, LT, LV, MT, NL, PL, PT, RO, SK, SL, SE. and checked in already approved versions.

Similarly, the opportunity to define the "Original Licensor" separately from the Licensor was examined (CS), but the PTE estimate that there is no distinction to make.

It is clear that the notion of "*Communication"* (to the public) is not always understood

Scope of the rights (§2) and limitations of Copyrights (§4)

"Communication to the public" still raises questions, (DK) i.e. (FR) if it covers the use of the program via internet or any network. It is the case. This should be clarified in a "Frequently Asked Questions" page (FAQ) related to EUPL

The guarantee of the right to use patents related to the Work (at the end of §2) could be sometimes interpreted as "implying that the Licensor has the right to patent software" (NL) and could be "odd" for GNU-GPL and other free software licences advocates (IT) or is in any case unknown in the national law (PT). PTE are unanimous to reject the interpretation that EUPL encourages or validates software patents. However, a FAQ page could also clarify the point.

IT asks if targeting "any media and format, whether not known or later invented" will not be considered as the assignment of future rights (invalid). RAG precises that this provision refers to the rights under copyright. These are not future rights. The same (current) rights apply to all future media under copyright law. The statement referring to "any media..." may therefore not be necessary since it is already implied by the licence under copyright law, but the statement's inclusion improves the clarity of article 2 especially for non-lawyers.

PL reminds that Polish law rejects the waive of moral rights. Same for RO. This is known: this provision has to be understood in the framework of the objectives of the Licence: a collaborative Work where everyone can modify. The PTE accept that it would not be enforceable in every country. However, EUPL is clear that the waive is "*to the extend allowed by law"*.

Communication of the source code (§3)

The duration of the obligation to provide access to the source code is not clear (according to CS) – However §3 limits it for "as long as the Licensor continues to distribute and/or to communicate the Work" CRID proposes to remove such limitation: "(the Code) remains easily and freely accessible for Licensees"
Extending the obligation does not clarify the duration (how to know that there are still licensees and the licence is not limited in time?) and may not be realistic (PES).

Obligation of the Licensee (5)

Copyleft clause: NL has question on the copyleft effect when only "very small parts" of the licensed Work are present in a Derivated Work (is the new Work still "derivated" then): is there a "de minimis" provision.

PTE considers that the issue is common to all copyleft licences and that the interpretation is so depending on "de facto" situation that appreciation must be left to the judge (possibly assisted by ICT experts). This is the reason why in §1 the extend

of modification or dependence that is required to make a "Derivative Work" is not defined.

(IT) Questions about Sublicensing (Licensee becoming Licensor), that is unknown in GPL. It was explained why it facilitates the enforceability of EUPL, by allowing ANY of the members of the "chain of authorship" to enforce the licence for the whole Work.

Chain of Authorship (§6 al. 3)

NL (Institute for Information Law) estimates that §6 al 3 contains a flaw, as it suggests that merely *receiving* the Work creates the rights and obligations under this License; of course, the License must first be accepted.

PTE admit that §6 wording is not very happy.

CRID suggest to modify the EUPL text:

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

PES: Even if perhaps not optimal, al.3 currently states:

"*Each time You, **as a Licensee**, **receive** the Work, …*" The wording "***as a Licensee***" refers to the preliminary acceptance of the Licence (no obligations are created without this acceptation). Acceptance conditions are clearly stated in §10. Therefore no need for modification.

Disclaimer of Warranty and of Liability (§6 al. 1 & 2, 7 & 8)

Multiple translators question the validity or warranty and liability exclusion according to their national laws (CS, IT, PL and PT). PTE fully admit that disclaimer would not be totally enforceable in all circumstances (all kind of damages) and in all EU Member States, however the current formulation is a good compromise and "software Licensors have to live with…"

IT coming with the same questions, CRID proposes to modify liability exclusion (§8) as follows:

> *"Except in the cases of willful misconduct or damages directly caused to physical persons, **and to the extent permitted by applicable law**, the Licensor will…"*

However, the final statement of clause 8 is equivalent to the text proposed for inclusion: "However, the Licensor will be liable under statutory product liability laws as far such laws apply to the Work" and the needs for such a modification is not evident (RAG / PES)

Additional agreement (§9)

CS questions the merchantability of the Licence. PTE estimate that merchantability is related to additional services related to the Work, and not to the Licence.

Other questions (inside PTE team) are related to additional agreement related to confidentiality, to the need of restricting access to the code "for public security reasons" to persons who "need to know" (i.e. Ministry of Interior about authentication software for the NIS - National Interface to Schengen and other sensitive matters.)

This should not be enforceable as EUPL complement (EUPL excludes more restrictive additional terms or conditions).

It could be a "policy and practice" inside the "contributors circle" and may be covered by a "non-disclosure" provision in a consortium agreement signed by all project contributors prior to launch their project and by new stakeholders joining the project. However such provision would not invalidate licensing if a member of the group decides to license (under EUPL) to a third party.

FR question the "responsabilité du fait des produits". Is it about "Produit défectueux?" – PES: Yes (according to Directive 85/374/EEC). CRID proposes to clarify the French version by adding "*défectueux*".

Acceptance (§10)

IT questions the acceptance of the contract, since applicable law may formally request "double signature". From a "formalist" point of view, this is true, however such provisions are for a long time outdated by practice, especially in the domain of software: almost every other licence for software (including proprietary software) includes similar "shrink-wrap" or "click through" clauses implying acceptance of the contract - which hasn't been often tested in court.

For the EUPL, which does not impose contractual terms beyond what is already imposed by copyright law, non-acceptance of the EUPL is not a practical problem since non-acceptance of the contract would mean the user is bound by ordinary copyright law, which is more restrictive than the EUPL: copying the EUPL-covered software would be a copyright infringement.

Information (§11)

No specific question on that topic.

Termination (§12)

What happens to rights produced by the Licence in case of termination: injunctions, damages, request for destruction of copies etc. (NL) CRID / PhL agree with NL proposal that "It is advisable to state that termination leaves the other rights of the

owners under national law unaffected" and propose therefore a change at the end of Al. 1 of §12 (bold part): The Licence and the rights granted hereunder will terminate automatically upon any breach by the Licensee of the terms of the Licence**, without prejudice to other rights of the Licensor available under applicable law.**

Other PTE team members estimate that it is not necessary since the Licence in no ways limits the authority of the parties to litigate.

Validity, New versions ($13)

Multiple translators question the validity of unilateral modifications of contractual obligations, facing their national law (CS, .NL, FR, PL)

PTE recognise the issue, however the commitment to accept new versions is based on trust (that the Commission would modify to improve EUPL reliability and not to change the licence rights or objectives).

CRID propose to add the "Bold part hereafter"(§ 13 in fine): "*The new version of the Licence becomes binding for You as soon as You become aware of its publication* ***and continue to use the Work."***

The modification proposed by CRID will not restraint parties that want to continue to use the Work to refuse to be governed by a new version (i.e. because the Work is used as application to support years of their own business information or documents, they would not like to migrate to another solution that may be expensive). What is the real risk? It seems limited to "Stay with the previous version enforced", assuming that one of the parties goes to Court, claiming for evidence that the new version hurts its interests, compared to the previous one. This is obviously not likely to occur (lack of interest), provide the Commission modifies in order to reinforce the clarity of the text, the open source rights and the legal security (which seems to be the meaning of "required and reasonable"). Such modifications should occur after consultation of the "EUPL community" inviting stakeholders to update their code and web site by explicitly linking to the new version.

Concerning sub Licensors, acceptance of new conditions could be demonstrated by the fact these licensors will update their web site and communicate the higher number. A good idea is to add any new EUPL version number in the "list of compatible licences" for all its versions.

Jurisdiction & Applicable law (§14 & 15)

NL questions the applicable law in the case (due to compulsory regulations) the "court of the residence of the consumer is the only valid choice".

The above NL formulation may not be very appropriate (as applicable law and location of the Court are two distinct questions), however the two issues are often linked, the question is complex and needs for a debate.

Annex

PL: Original "English" licence names, (i.e. GPL) that are the only ones to have binding value, should not be translated. – True (and checked in all annexes)

Workshop topics:

Based on received comments, the following topics constitute the base for the discussion in the coming Workshop.

- Preamble, Title & introduction
- Definitions (§1)
- Scope of the rights (§2 and 4)
- Communication of the source code (§3)
- Obligation of the Licensee (5)
- Chain of Authorship (§6 al. 3)
- Disclaimer of Warranty and of Liability (§6 al. 1 & 2, 7 & 8)
- Additional agreement (§9)
- Acceptance (§10)
- Termination (§12)
- Validity, New versions ($13)
- Jurisdiction & Applicable law (§14 & 15)

Detail of comments per version / country

This section presents the details of type 3 and 4 comments per version country.

France was added to the list for information, however it is not part of the quality control process.

BULGARIAN

TYPE 3	Page	Comment
Not present		
TYPE 4	Page	Comment
Correct spelling of the law	2	PES: no observations (n.o.)*
Correct legal term	3	"
Correct legal term	5	"
Correct legal term	5	"
Correct legal term	5	"
Correct legal term	7	"
Correct legal term	7	"
Correct legal term	7	"

* The Bulgarian revision and coordination work has been concentrated on the adoption of a terminology in accordance to the Bulgarian law. Therefore the reviewer who has no reasons to question the opportunity of the above improvements has no objections or comments.

CZECH

TYPE 3	Page	Comment
All corrections	Preamble	PES: no observations, The EN preamble says that "IDABC continues and deepens the previous IDA ("Interchange of data between Administrations") It is indeed to notice that the full (new) IDABC acronym is not detailed.
The same approach to the new terms (reference to later definition) should be kept as in the first	1	PES: no observations

paragraph.		
The word "or" is not a term and should not be in Italics in Czech nor English version	1	PES: Right. This should be checked in all version (including approved EN, FR, DE). PhL : No Additional Comment (n.a.c.)
For the clarity we suggest to provide for a definition of The Original Licensor as indicated in Art. 14 and 15 below. Given the concept of Czech law, rights of Licensors as defined above are just derived from the original rights of the European Commission that first released the software in question for further use and distribution governed by this European Union Public License	2 (two times in the text)	PES: Interesting however this would produce adds to EN FR DE. PhL : We must bear in mind that we must pay attention to the different players, to their different status, as well as to the implications of introducing such new definition (Original Licensor) : **- Licensor, Licensee and Contributor** are broadly defined in article 1. The same person may become any of these players. In the copyleft clause, there is an explicit reference to the fact that the Licensee may become Licensor. By "original Licensor", it is meant the Licensor granting a licence on the Original Work. In the definition of Original Work, reference is made to its "Licensor" (and not the original licensor)… if we introduce the specific notion "Original Licensor", we will have to check and adapt the licence each time the term "Original Work" is used. Such adaptations could have prejudicial effects on the whole licence. Instead of introducing a new definition for "Original Licensor", one should wonder whether it would not be better off to erase "original" before "Licensor" in art. 6 & 9. Indeed, the licensee has the right to create Derivative Works. When he distributes such Derivative

		Works, he becomes "Licensor" (explicitly provided in the copyleft clause). Another implicit effect is, unless I'm mistaken, that his Derivative Work becomes an Original Work in the sense of the license he contracts with other "new" Licensees. My point is that I do not exactly see the point of making a distinction between "Licensor" and "Original Licensor", and that the adjective original could be misleading. CRID : - There is no distinction to make between original licensor and other licensors - this actor (original Licensor) does not have a particular position in the licence - We must stick to the original text unless absolute necessity
Correction of the translation	2	PES: n.o.
Correction of the translation	3	PES: n.o.
Correction of the translation	3	PES: n.o.
We suggest adding "Original" as it logically adheres to the "Work" here. There is only "Work" used in the English version.	3	PES: preferably not: "Work" is generic and covers also subsequent version. A licensee can also modify any part that was added to the original work. PhL : I agree with PES
Correction of the translation	4	PES: n.o
The original licensor is not defined, please see comment above	4	PES: ok, see above
Please see comment above regarding definition of the "Original Licensor"	4	PES: ok, see above
Please see comment above	5	PES: ok, see above
Correction of the translation	5	PES: n.o.
Correction of the translation	6	PES: n.o.
Correction of the translation	6	PES: n.o.
Correction of the translation	6	PES: n.o.
TYPE 4	Page	Comment
In accordance with Czech law, the Work itself is not provided (i.e. transferred), it is the right to use that can be granted only. The English	1	PES: it is more than just the use in the case of an OSS licence: it is the work itself with the right to modify

version may then be a little misleading in this sense.		it. According to Art. 2, The author (the Licensor) waives his right to exercise his moral right (i.e. to forbid alterations to his/her Work) …in order to make the licence effective. PhL : a license in the strict sense of the term deals only with IP rights. However, it is also a contract, in which more or less anything could be provided (including the obligation to deliver the Work itself). NB: GPL 2 is known for not explicitly forcing the licensor to provide the source code… only the licensee has such obligation.
It is not clear from the English version what the duration of the sublicense is, i.e. the duration of the obligation to provide the access to the source code.	4	PES: The EN version says: "as long as the Licensee continues to distribute and/or communicate the Work" – which is indeed flexible and subject to case by case interpretation. Would it be useful to fix a minimum? PhL : I understand the issue this way: we could imagine a (very theoretical) situation where a Derivative Work would solely be provided to one person (client) and only in object code… As there would not be any more distribution, the source code could be available only one day or even less… Suppose that the next day, the client comes and asks for the source code… CRID's CHANGE PROPOSAL (to be discussed): "*If the Work is provided as Executable Code, the Licensor provides in addition a machine-*

		readable copy of the Source Code of the Work along with each copy of the Work that the Licensor distributes or indicates, in a notice following the copyright notice attached to the Work, a repository where the Source Code ***remains*** *easily and freely accessible* ***for Licencees.****"*
Please note that the licence is free of payment and given art. 9 below it may be assumed that it should not be subject of merchantability, if so we suggest providing undoubtfully for non merchantability clause.	4	PES: It is a common believe that OSS licences are free of charges. In therory, charging fees for OSS licensing is perfectly allowed. In practice, a group of public administrations investing in a common application could condition the entry in the group (for new comers) to the payment of a contribution. Asking such fee as a "licence fee" in case of licensing sublicensing by one of the group members is not valid with EUPL. PhL : One may charge a fee for distributing (service), but NOT for licensing (IP management). One may not charge a fee for OSS licensing. However, indeed, one may also charge a fee if it's a "contribution to the development of the software". Please note that, according to art. 2, the licence is royalty free. CRID : Conditioning the obtaining of a licence to the payment of a fee is contrary to open source principles. PhL : - art. 1 of the OSI definition: "The license shall not require a royalty or other fee for such sale."

		- 3rd freedom of the FSF definition : freedom to redistribute…
Czech law provides for liability for damages, such liability is not affected by non warranty clause, please see also comment below.	4	n.o.
It appears that the English version word "Licensor" is not appropriate as "Licensee" would be more logical from the content	5	n.o.
Please note that under Czech law the disclaimer of liability in the above scope will most likely be invalid and if damages would occur the liability would be governed by mandatory legal provisions.	5	PES: the liability is NOT excluded in all cases, as misconduct (i.e. wilful introduction of a virus in the software) and damages to persons (i.e. the software is aimed to guide an aircraft, a ship or a car via GPS or Gallileo and causes a crash). Commentators of national laws implementing Directive 85/374 about liability for. defective products said that while it is applicable to software, damages other than physical/material are excluded. PhL: we knew since the beginning that the disclaimer would not be totally enforceable in some countries… (National legislation discrepancies). Any software developer has to live with that I think…
Please note that under Czech law such provision on unilateral change of licence agreement is invalid. License is a contractual relationship that may be changed upon the agreement of both parties involved.	6	PES: This is Art. 13 known issue. If this provision is claimed as invalid (i.e. the licensee has some motivation to invoke invalidity, because the unilateral change contradicts his/her business interests), this means that parties would continue their relationship based on the agreement "at the time of contract conclusion". This point should be discussed in Workshop. PhL : To be discussed indeed. CRID : CHANGE PROPOSAL : "*The new version of the Licence*

		becomes binding for You as soon as You become aware of its publication ***and continue to use the Work.”***

DANISH

TYPE 3	Page	Comment
In the definition of *“The Original Work”*, the word “communicated” is used. We suggest this word to be translated to “formidlet”, that is “provided”, and not as “overført til almenheden”, that is “communicated to the public” (according to the Infosoc Directive). Therefore, no change is suggested to the present translation in para 1. However, in para 2 where the scope of the License is defined, reference is made to “communicate to the public” (fourth hyphen). In that paragraph we have therefore maintained reference to the Danish concept “overføre til almenheden”. One might raise the issue whether the reference to “communication” (and not communication to the public) is recommendable, given the fact that the concept does appear as such, neither in the Berne Convention nor in the EU Copyright Directives. We suggest that this issue be discussed at the November meeting in Brussels.	2	PhL : “Distributed and/or Communicated” refers to the defined terms “Distribution and/or Communication”. Grammatically speaking, such modification would be unwelcome. CRID : Art. 2 refers clearly to the communication to the public + making available… RAG: regarding the 2nd para, it may indeed make sense to replace "communication" / "communicates" with "[engages in] communication to the public" if it is not clear that "communication to the public" is what is actually meant.
A similar translation of “communicates” is suggested in the definition of *“The Licensor”* and – indeed – in the definition of “Distribution and/or Communication.”	2	PhL : idem
In the definition of *“Executable Code”*, the English version of the EUPL makes reference to “code which has generally been compiled …”. We are not certain what is understood by this reference to “*generally*”. The provision refers to that very *specific* software which the license refers to. Since any compilation must aim as this specific software, it is difficult to understand how this can be “general”.	1	PhL : “Generally” is used in order to leave room for possible other technologies than compilation as such. RAG: executable code may be a result of compilation. however, in some cases (interpreted languages) the source code may not be compiled and there may be no executable code at all; or there may be intermediate forms where parts of the code can be / are compiled and the rest are only in source code. the use of "generally" here therefore indicates that executable code is generally the result of compilation of the source code, but

		in any case refers to the entire form of code required in order to execute, whether it is (entirely) compiled or not.
We suggest – as a material change – that reference in this headline is made to the Danish word for Dispute Resolution, Konfliktløsning	6	PhL : n.o.
TYPE 4	Page	Comment
Not present		

General observations:

The (Commission's) translator has ignored initial capital letters in defined clauses. Since the use of initial capital letters conveys important information, we have re-introduced that use in the consolidated translation.

According to Danish tradition, we have chosen to refer to the articles in the EUPL with the word "pkt." (punkt). However, one might consider using the §-sign instead which is more often used in Danish contract language.

Comment:
PhL : nac

PES: Indeed a systematic application of capital letters in ALL translated versions id necessary. The above remarks is reproduced by several experts below.

The question about using "pkt" or "§" (instead of the French "Article") is depending on legal culture (tradition) in the various Member States

Re chapeau:
We have found it unnecessary – as suggested by the translator – to refer to this license as an "open" (*åben*) license. The word "open" is not included in the original document. A similar change is made in the preface (forord).

Comment:
PhL : nac
PES: agreed

DUTCH

TYPE 3	Page	Comment
'or a derivative work' seems exemptions that are to the detriment of owners of derivative works should also still apply	3	PhL : "… in the Original Work **or Software**…" Software = Work Work = Original or Derivative Work. It is therefore already covered (but indeed with some redundancy).
TYPE 4	Page	Comment
The preceding sentence may well be circular	1	PhL : indeed, But we know that this Licence = EUPL.
The same is said twice	2 (two times)	PhL : indeed (no consequences ?)
What is the use of the definition of "distribution and communication" above, if all elements are named separately here anyway?	2	PhL : this "kind of hybrid" term was used in order not to create confusion with dedicated legal terms (distribution or communication to the public)
Article 2 implies the licensor has the right to patent the work. It is questionable whether this is advisable. It would be preferable if the licensor refrains from obtaining patents on the (derivative) work. If, for example because of compatible foreign licences, a patent is granted, the licensor should not impose any further restrictions on the licensee's exercise of the rights granted herein.	3	PhL : the meaning is not to interfere with patent regulation. It only says "should a licensor have a patent that is used in the Work, he would then give a free license to use the patented technology" RAG: The licence makes clear that further restrictions cannot be imposed. It is essential to ensure that any patents that may apply (and are owned by the licensor) are included within the scope of the licence. The licence in no way implies any right to patent the work, it only makes a provision for the situation where such patents may exist.
Is this correct, should the copy of the source code indeed be machine readable?	3	PhL Yes, in opposition to a print out for instance. RAG: This is a generally accepted principle, since the only reason with current (or future) technology for providing source code only in a format that is not machine readable (e.g. a paper printout) would be to make it difficult to use the source

		code at all.
The use of very small parts of the licensed software in newly created software could, because of the copyleft clause, create the obligation to licence this new software under the provisions of the EUPL. A kind of 'de minimis' provision in this respect could be considered	4	PhL: to be discussed RAG: Any fair use or similar provision in current copyright law would apply to the use of small parts of EUPL software. The EUPL does not add restrictions beyond what is provided for in copyright law. CRID : the copyleft effect only comes into play when original parts of the licenced work are reused. Derivative works are defined in the licence (and the definition refers to national law). The re-use of public domain (such as e.g. one line of code which is not copyrighted because it is not original) is not subject to the terms of the licence; in such case, the copyleft effect will not come into play.
This repeats art. 3, Makes the license unnecessarily long.	4	PhL : indeed (only "aesthetic" ?)
What about a warranty as regards the patents that are mentioned in art. 2?	4	PhL : If the Licensor is not the patent holder or does not have a right to sublicense, he therefore cannot grant a license on such patent. Given the actual "software patentability issue", no one may warrant that he/she is not infringing any patents.
According to Article 6 the contributor has to grant a licence to his contribution to the work, under the terms of this licence. It is possible that the contribution to the work has been made by a number of contributors. The consequence is there are different owners of the work. It would be advisable to create a explicit provision for this type of cases stating this obligation for all	5	PhL : "… and the subsequent Contributor**s**…" According to me, it is already clear enough.

owners.		
What about a warranty as regards the patents that are mentioned in art. 2?	5	PhL : cfr supra
Under Dutch law as regards standard form contracts a provision denying a consumer the right to terminate a contract is null and void, art. 6:236b Dutch Civil Code	6	PhL : if the contract is terminated, so is the licence. RAG: the EUPL does not affect the right of a consumer to terminate the contract. However, in case the consumer does so, the consumer has no longer any licence to copy, use, modify or distribute the software, as doing so would simply be copyright infringement.
Seems superfluous. Is probably based on the e-commerce directive which by now has been implemented all over Europe anyway. Why add this to the contract?	6	PhL : the aim was to explicitly remind the E-Commerce principles
Article 12 dealt with termination of the licence on the basis of default. The breach of the terms of the licence results in a copyright breach, also. The owners of the copyright in the work may ask for an injunction or order, damages, profit contribution, impound or destruction of the Work. It is advisable to state that termination leaves the other rights of the owners under national law unaffected. If there is a shared ownership in the copyright in the work, all the owners are independent of each other entitled to litigate. The Licensee, however, must have authority to start litigation under Dutch law. This authority is not granted in this Licence.	6	PhL : I Agree with this statement : "It is advisable to state that termination leaves the other rights of the owners under national law unaffected". RAG: The licence in no way limits the authority of the licensee to litigate. If such authority exists under Dutch law, it is not restricted by this licence. Nor may it be necessary to state that termination of the licence in no way affects the copyright claim of copyright holders. It is clear that termination of the licence terminates any rights under copyright law granted to licensees by the licensors. CRID's CHANGE PROPOSAL: *The Licence and the rights granted hereunder will terminate automatically upon any breach by the Licensee of the terms of the Licence**, without prejudice to other rights of the Licensor available under applicable law.*** CRID : yes indeed, but impossible

		to solve, (especially in national laws)
Check whether this is a valid choice of law. I'm not an expert, but seem to remember that in consumer contracts the court of the residence of the consumer is the only valid choice.	7	PhL : to be checked and discussed indeed. Anyway, the choice of law was made according to EC's specifications. Should the clause not be enforceable in some cases, so be it… See article 5 of the Rome Convention (infra) CRID : To be checked (cfr. infra)

(For information) ROME CONVENTION : article 5

Article 5 Certain consumer contracts

1. This Article applies to a contract the object of which is the supply of goods or services to a person ('the consumer`) for a purpose which can be regarded as being outside his trade or profession, or a contract for the provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

- if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or

- if the other party or his agent received the consumer's order in that country, or

- if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to:

(a) a contract of carriage;

(b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

5. Notwithstanding the provisions of paragraph 4, this Article shall apply to a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Further comments from DUTCH advisors

Comments on the European Union Public License (EUPL) 1.0

Lucie Guibault and Ashwin van Rooijen (Institute for Information Law, Amsterdam)

(Please note that these are general comments provided by a third expert: these comments are not directly related to the translation process)

Article 1:	
"Executable Code" is defined without a link to the Work.	PhL : Indeed
"Licensor" is a crucial term. In all open source software licences with a copyleft clause, it raises important questions regarding the chain of title and licensors. The EUPL defines the Licensor as the person distributing and/or communicating the Work under the Licence. Since no names appear on the licence it is unclear whether the licence aims at the person distributing and/or communicating the Work to the Licensee in this particular instance, or whether previous Contributors that have may have modified the Work are covered as well? In other words, on the basis of this licence, it is difficult to follow the chain of title between subsequent Contributors.	PhL : Cfr supra (discussion about the proposal to add "Original Licensor" amongst the definitions.) Copyleft clause: licensee becoming licensor Art.6, last §: the original Licensor and subsequent contributors grant you a licence… RAG: Previous contributors would be covered at the point where they distribute and/or communicate their contribution. Further distribution by a third party does not (and should not) involve the previous contributor except for the contributor's rights to enforce the EUPL as a copyright holder of modifications.
"Distribution and/or Communication" includes the lending of the Work. To our knowledge, this is incorrect since authors of software do not enjoy a public lending right on software under European copyright law (certainly not under the Computer Programs Directive, nor under the Rental and Lending Rights Directive).	PhL : True as regards directive 91/250, but not true on national level. See i.e. Art. 5, c) of the Belgian Act of 30 June 1994 (computer programs) : « toute forme de distribution au public, y compris la location et le **prêt (=lending)**, de l'original ou de copies d'un programme d'ordinateur » Directive 91/250 : "Whereas, for the purposes of this Directive, the term 'rental`

	means the making available for use, for a limited period of time and for profit-making purposes, of a computer program or a copy thereof; whereas this term does **not include public lending**, which, accordingly, remains outside the scope of this Directive;" Directive 2006/115 [art. 6, 2)]: "Where Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration." RAG: The point on lending may be valid. But it affects the original EUPL too not just translations!
Article 4 (limitations on copyright) should, for greater consistency, directly follow Article 2 (scope of rights), or even be part of it, since it directly relates to the scope of rights conferred.	PhL : consistency issue (no particular consequence?) RAG: Drafting style choice, doesn't affect transation.
Article 5 (obligations of the licensee) contains the crucial **copyleft**-clause, which is intended to ensure that the software is distributed without any further limitations. The copyleft clause applies whenever the Work is "Distribut[ed]" and/or "Communicat[ed]". "Distribution and/or Communication" of the Work includes, according to Article 1, "lending [and] renting". If this is correct, how can a Licensee receive, simultaneously, a right to freely use the Work for the duration of its copyright *and* a right to use it temporarily, or for a fee? In other words, how can the lender/renter enforce these limited rights if he has also provided the broader right to use the work for no fee, for the duration of copyright? The reference to the rights of rental and lending should be eliminated.	PhL: From my point of view, one may never rent a copyrighted Work as such (I do not rent à movie as such, only the DVD carrying it, I do not rent a Painting, only the wood, canvas, paint embodying it), it is always the media that is lent or rented. One could imagine to rent a CD (or a portable hard disk) with open source on it: the price will only relate to the renting of the media, not its content (if it's OK to sell a copy of the software, why would not it be OK to rent or lend it? Reference is always made to the media, not the IP rights or the protected Work as such). As regards the content, the open source licence will apply.
Furthermore, it seems that the copyleft clause should also explicitly apply to sublicensing of the Work.	PhL: Art. 2 : There could be a theoretical issue, but practically any sublicense, in order to be useful, should occur jointly with a Distribution and/or Communication

	of the work. As regards the theoretical issue, would "*nemo plus juris*" not be applicable in this case?
It is unclear why the definition of "**Compatible Licence**" is limited to and only included in Article 5; it seems more appropriate to include it with Article 1's definitions.	PhL: aesthetical issue PES: As the notion of "Compatible Licence" is used only in Article 5 (and in the annexe), a local definition provides more help to the reader than including it in the long list of Article 1
The compatibility clause, although arguably necessary, may considerably diminish this Licence's success. Since the compatibility clause only requires a situation of two simultaneous, conflicting obligations to make the compatible licence prevail, even a tiny portion of code licensed under a compatible license will change the licensing obligations for the project. For instance, if a developer incorporates a GPL-licensed sorting subroutine into an EUPL application, the developer is now faced with two licences in which case the compatibility clause prescribes that the compatible (here, GPL) licence prevails should the two conflict.	RAG: This is unavoidable and intentional! Although it may indeed limit the extent of software that is available under the EUPL, it will ensure that software initially released under the EUPL is developed and reused further. Without the cooperation of authors of other copyleft "compatible" licences, it is impossible to insist that the derived work combining EUPL and a compatible licence be released under the EUPL. PhL: It is left to the "project leader" to establish a policy in order to keep the project under EUPL or not… (such as, "do not use GPLed code", etc.). (In the EUPL,) Any clause refraining from using whatsoever tiny piece of GPLed Code could have had political consequences… PES: From a Public Administration point of view, it may be important to use EUPL as licence. However this P.A. may not be upset if a derivated work is licensed by another licensor under a compatible licence (= providing similar guarantees, i.e. that the work will not become proprietary)
Article 6 (chain of authorship) warrants that the Licensor has the necessary rights to sublicense; it may be helpful to refer to the rights listed in Article 2. In my view, it would be clearly preferable to distribute the substance of this Article to Articles 2	PhL: The GPL 2.0 works that way (art. **6.** "Each time you redistribute the Program (or any work based on the Program), the recipient automatically receives a license from the original licensor to copy, distribute or modify the Program subject to these terms and

and 5. Thus, Article 2 would include a provision providing to the Licensee a warrantee with respect to copyrights in the Work (perhaps right before the warranty with respect to patents). Article 5 would include an obligation for a Contributor to warrant ownership of copyrights or the right to sublicense, as appropriate. The last clause ("Each time you […] of this Licence") suggests that there are more parties to the contract (or more contracts) than just the Licensor and the Licensee, namely, previous Contributors who also license their contributions to the Licensee. This seems incorrect: their contributions are, in our view, sublicensed by the Licensor, not directly by the Contributors. In other words, the Licensee receives the necessary rights only from the Licensor, not from all the previous Contributors in the chain. The other interpretation is that there are indeed multiple Licensors; in that case, the Licensee contracts not only with the Licensor that Distributed and/or Communicated the Work to the Licensee, but also with previous Contributors.	conditions".)
It is unclear how the formation of such contracts would take place.	PhL: In Belgian Law, this is the "Stipulation pour autrui".
In any event, the last clause of Article 6 appears only to *explain* how the rights and obligations between Licensor and Licensee function in a chain. The actual rights and obligations of an individual link in the chain are defined, in our view, by Articles 2 and 5. Article 6's last sentence therefore seems superfluous.	RAG**:** We agree that the last clause in article (6) may appear superfluous in that it provides for a licence between the licensee and *every previous* contributor and licensor (for the portion of the work to which they have a right), while article (2) through sub-licensing ensures that a single licence exists between the immediate (last) licensor and the licensee for the *entire* work. However, we note that the purpose of this apparent redundancy is security of enforceability. Without sub-licensing, (i.e. using the GPL model), an infringing licensee could argue that a licensor attempting to enforce has insufficient legal standing, and require that a substantial proportion of copyright holders join an enforcement action. With *only* sublicensing, and not the last clause of article (6), upstream licensors would not

	have the opportunity to enforce the licence terms if the immediate licensor chooses not to enforce them. Upstream licensors would only have the opportunity to sue for copyright infringement without reference to licence terms, and that too only in proportion to their copyright of the entire work.
	PhL: The chain of contributors is twofold: EUPL states also that any licensor and contributors grant you a licence (link1). This is "standard" as regards open source licences (cfr. supra : GPL works that way). EUPL is sub-licensable: the licensee may grant the same licence to a third party. (link2). If one link breaks, the other remains! Anybody receives the licence from anybody. Link 1 is the traditional open source/copyleft link : the owner of the rights gives a licence to anybody who abides by the terms of the licence. In an A-B-C chain, even if B infringes the licence, C keeps his licensee rights straight from A. Link 2 may be useful in case a licensor sells his copyrights to the program to someone else (supposing that a due diligence /clearing failed). Does the new owner of the program must respect the licenses granted by the assignor? To which extent (only past or past and future)? Does a licensee have a right/action *in rem* or *in personam* ? What if the assignee sues everybody for infringements to his (newly bought) copyrights? In GPL style copyleft system, where the licence is granted by each contributor (and without the right to sublicence) what if one contributor sells his rights without reserve: he is not able to fulfill his obligations anymore … (he remains the "licensor" whithout keeping the right to license, as he is not the owner anymore) The right to Sublicense may help in such circumstances: as A granted B the right to sublicense to C, C could still get his licence from B should A not be the owner of the copyrights anymore.

	Other question, in link type 1, who is entitled to sue someone who is infringing the licence? The licensor. In the second case, would not the answer be "the licensor and sub-licensor"?
Moreover, the clause contains a flaw, as it suggests that merely receiving the Work creates the rights and obligations under this License; of course, the License must first be accepted.	PhL : some acceptation issues are unavoidable.
	CRID: CHANGE PROPOSAL: *Each time You **accept the Licence**, the original Licensor and subsequent Contributors each grant You a licence to their respective contributions to the Work, under the terms of this Licence.* PES: perhaps wording of §6 is not optimal , but it currently states: "*Each time You, **as a Licensee**, receive the Work, …*" The wording "***as a Licensee***" refers to the preliminary acceptance of the Licence (no obligations are created without this acceptation). Therefore no real need for modification.
Another issue that might deserve consideration under the EUPL is the question of ownership of rights on software created by employees in the course of their employment. According to article 2(3) of the Computer Programs Directive "Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by	PhL: according to me, it should not affect the licence: when working as the employee of a company, a developer acts "as a limb" of such company. It belongs to the company to adopt the best policies on this regards.

contract." Depending who, whether natural or legal persons, is intended as the main type of users of the Licence, it may be very important to include some language on this point in the Licence.	
Article 7 contains a disclaimer of warranty. It excludes warranty against non-infringement, except for copyright as meant in Article 6. However, the Licensor is also obliged to warrant against infringement of any necessary patents (article 2).	PhL : Not "ANY" patent, only the Licensor's own patents. PES: Art. 2 is aimed to avoid that a Licensor could "empty" the rights provided by the licence because the exercise of these rights would be depending on its own patents "parallel" licensing. PhL : cfr. the general idea that "software patenting is creating a mine-field under the feet of any software developer". No developer may be 100% sure that he is not infringing a patent.
Patents could be included in article 7. The sentence about Article 7 being an essential part of the Licence seems superfluous; it only suggests that other Articles are less important.	PhL : could have some influence in other country?
Article 13 states that the European Commission can "put into force" translations and/or new versions of this Licence so far as "required" and "reasonable". The new version becomes binding. What does "required" and "reasonable" mean? It is uncertain whether this clause, which creates an unknown future contractual obligation, is enforceable in all EU jurisdictions assuming that the European Commission is not a party to most instances of this Licence.	PhL : true PES: So what? The risk is limited to "Stay with the previous version enforced", assuming that a Licensee goes to Court, claiming for evidence that the new version hurts its interests, compared to the previous one. This is obviously not likely to occur, provide the Commission modifies in order to reinforce the clarity of the text, the open source rights and the legal security (which seems to be the meaning of "required and reasonable"). Such modifications should occur after consultation of the "EUPL community" inviting stakeholders to update their code and web site by explicitely linking to the new version. Adding last EUPL version in the compatible license list of all previous ones is recommended.
If, indeed, a court would rule that current Licensors and Licensees are not bound by a new version, it would appear necessary to include the "new version"-licenses in Article 5's compatibility clause. At the very least, as a compatible license, the new version	PhL : good idea

would automatically prevail over the older one once it enters the chain.	
Article 14 defines the applicable jurisdiction according to the Licensor's residence or primary business location. It is not clear which location prevails in case, i.e., a corporation headquartered in France is organized under the laws of The Netherlands.	CRID : This is a classical clause on applicable law
'Appendix' Compatible Licences As mentioned under Article 13 above, any new version of this licence should be automatically included in the Appendix. Moreover, knowing that the Open Source Initiative has approved an entire list of open source licences, we wonder why only these licences are mentioned in the Appendix.	**RAG:** In principle, all free software / open source licences that have a copyleft clause at least as strong as that of the EUPL could be included in the list of compatible licences. This would include GPL v3.0. Obviously, non-copyleft licences cannot be included, otherwise the point of having the copyleft clause in the EUPL would be entirely lost. PhL: See our report on the compatibility clause PES: It is obvious the the list of compatible licences will need to be complemented periodically. The report on compatibility (published on IDABC website http://ec.europa.eu/idabc/en/home) said that criteria to add licenses must be: - recognised licences (i.e. by OSI or FSF) - strongly copyleft - of practical use for EU or member States public sector projects**.**
Also the makers of the EUPL could consider including the GPL v3.0 in the list of compatible licences	PhL: indeed PES: this is one of the points that could be discussed during the Workshop.

ESTONIAN

TYPE 3	Page	Comment
New suggested translation of the original English text.	Preamble	
The translation of the term "Public licence-avalik litsents" is correct. However we must note that Estonian legal system does not include a term "avalik litsents" and therefore we advise to consider translating "European Union Public Licence" into "Euroopa Liidu tarkvara vaba kasutuse litsents" or "Euroopa Liidu litsents åldsusele" or "Euroopa Liidu litsents teose vabaks kasutamiseks".	1 (title)	PhL : n.o.
TYPE 4	Page	Comment
We would like to state that the term "litsents" is possible to understand in Estonian language in two ways- as "luba" or as "kasutusoigus". In this licence we have used the term "litsents" so that it would cover both possible interpretations of the term "litsents"	1 (title)	PhL : n.o.
According to the current wording the liability arises as soon as damage is caused to a natural person- therefore considerable risks arise as soon as the software is used by natural persons. Should the liability towards natural persons be more limited?	4	PhL : Could not be, according to me (cfr. PES memo)

FRANCE

France was not part of the translation process (official EUPL V 1.0 FR exists)
However we received comments/questions from Benjamin JEAN (Linagora)
Please comment, if applicable

TYPE 4	
La définition adoptée pour l'enclenchement de la licence se révèle assez standard et semble être sujet au même travers que la GNU GPL : un logiciel déployé via le réseau n'est pas considéré comme distribué (puisque seules ses fonctions sont perçues par l'utilisateur final — ceci contrairement à l'OSL ou l'AGPL) ;	PES: it seems to me that article 2 "scope of the rights" cover this with the right to: "*communicate to the public, including the right to make available or display the Work or copies there of to the public and perform publicly, as the case may be, the Work*". And according to article 10, the licence is accepted … by exercising any rights granted by Article 2" PhL : OK with PES

L'article 5 précise que « [l]e Licencié (devenant Donneur de Licence) ne peut pas offrir ou imposer d'autres termes ou conditions sur l'Œuvre ou les Œuvres Dérivées, *qui restreindraient ou altéreraient les termes de la licence* ». Peut-on voir ici une possibilité d'ajouter des termes qui, au contraire, étendraient ou amélioreraient les termes de la licences ? On se trouverait alors avec une modularité assez identique à celle de la GNU GPL v.3 qui permet l'ajout de telles permissions ;	PES: should an additional agreement be compatible, which "for public security reasons" would restrict re-licensing to persons who "need to know" (i.e; Ministry of Interior about authentication software for the NIS (National Interface to Schengen)? PhL: According to me, no (no additional terms or conditions) PES: Then it could be a simple "policy and practice" that will not invalidate valid licensing if a member of the group decides to license under EUPL to a third party.
Quelle est la flexibilité autorisée par « laisser intactes toutes les notifications de droit d'auteur, brevet et/ou marque et toutes les notifications faisant référence à la Licence et à l'exclusion de garantie » : est-ce dans l'esprit, ou dans la forme ?	PES: to discuss PhL : do we really have to go so far into details? Personally, I would say that it depends on a case by case basis.
Lorsque la licence parle de « responsabilité du fait des produits », s'agit-il de la responsabilité du fait des produits défectueux, ou s'agit-il d'une responsabilité sui generis, proche de celle du fait des choses ?	PES: it is about liability for. defective products as implemented by **DIRECTIVE** 85/374/EEC OF **25 JULY 1985** and by related national laws. It is applicable to software. However in such case, national commentators have excluded damages other than physical/material : « *les seuls dommages dont ladite loi* (which transposes the directive) *assure la réparation sont les atteintes physiques à la personne et les dommages matériels causés aux biens. L'application de ce texte aux logiciels ne vise donc que les situations où ceux-ci seraient à l'origine directe d'une atteinte à la sécurité des personnes ou des biens, hypothèses pour le moins résiduelles.*[5] CRID's CHANGE PROPOSAL : Clarify with « *…responsabilité des produits défectueux…* » in the french version
Quant à l'Application immédiate des nouvelles versions de la licence, n'y-a-t'il pas moyen pour l'auteur, comme dans la plupart des autres licences ayant des stipulations similaires, de limiter à une seule version de la licence, ou à " V. 1.0 ou ultérieure " ?	PES: to discuss (see my comments about the risk in the Dutch section). PhL : currently, the answer is no. Do we have to modify the licence? Or shall the Commission make a statement on this? CRID :

[5] V. Sédaillan « Garanties et responsabilité dans les logiciels libres » - Réponse ministérielle No 15677, JO ANQ 24 août 1998

	"open source character of the licence" : political choice to be made by the Commission. Do we have to leave the user the possibility to remain under the old licence regime? Do we have to add a clause saying that the licence is repealed should the licensee not agree with the modifications of the upper version?

FINNISH

TYPE 3
Not present
TYPE 4
Not present

GREEK

TYPE 3	Page	Comment
Not present		
TYPE 4	Page	Comment
In the Greek legislation there is not an express mention of the right to display, so we should not include it	2	PES: It is not because the Greek law ignores this mention that the Greek EUPL version should avoid it. May be practical case of application should be explained (see French comments No 1). PhL : I agree with PES

HUNGARIAN

TYPE 3	Page	Comment
Not present		
TYPE 4	Page	Comment
Not present		

ITALIAN

TYPE 3	Page	Comment

The original wording in Italian was wrong because it could give the impression that, under this Licence, the Licensor could provide the Licensee with either the Source Code or the Executable Code, whereas the source code must be provided in any event. Our correction aims at emphasising that the option given to the Licensor in the english text ("…and also as Executable Code…") refers only to the Executable Code, not to the Source code	1	PhL : n.o.
Here the original Italian translation spoke wrongly of "opera nella forma…" since the Source Code is not the Work ("Opera"); it is, rather, the shape of the Work, as shown by the original wording in English, which speaks of "human-readable form"	2	PhL : Source and object are both protected works…
Speaking of "persona giuridica", as this term is understood in the Italian legal system, could raise uncertainties in relation to the use of the Licence by entities or institutions that, notwithstanding their legal subjectivity, are not treated as perfectly autonomous legal bodies. Under Italian law, this situation occurs for entities such as nonprofit associations ("associazioni non riconosciute", "comitati") and for commercial enterprises whose obligations can be enforced even against their partners/members. Therefore the term "ente" may usefully comprise all these entities together with all entities understood as "persone giuridiche"	2	PhL : n.o. (foreign vocabulary…)
See supra, sub Licenziante	2	?
See supra, sub Licenziante	2	?
It is not in the English version	3	PhL : n.o.
The original Italian translation modified the meaning of the original English version	3	PhL : n.o.
English version does not refer to "the" repository, but to "a" repository	4	PhL : n.o.
See supra sub art. 3	5	"
The original Italian translation was not accurate	5	"
This expression, which was used in the original version of the Licence in English, was missing in the Italian version	6	"
TYPE 4	Page	Comment
Under article 110 Law no. 633/1941 the transfer of copyright ownership has to be proven in writing. This formal requirement concerns the proof of the existence of the contract and doesn't affect its validity. In this context, the licensee cannot rely on article 110 Law no. 633/1941 to	1	PhL : n.o.

challenge the effectiveness of the licence: he or she can use the work lawfully only as long as he or she accepts the licence and maintains its existence. However, from a theoretical perspective, the licensor might rely on the lack of written evidence to challenge the existence of the licence, even if part of the Italian legal doctrine is persuaded that the electronic file can work as a written evidence		
It would be highly desirable that the Italian version of the Licence made use of the denomination of "software" used under the Italian Copyright Act, i.e. "programma per elaboratore"	1	PhL : seems OK RAG: This is reasonable.
The use of capital letters for all of the words and expressions which are defined under this Licence must be preserved in order to improve the clarity of the Licence terms and keep the Italian version as close as possible to the original English version. Obviously, this correction proposal and comment apply to all identical cases through this Licence	2	PhL : OK
It is worth emphasising that the GNU-GPL and other free software licences do not allow the sub-licensing of the original work and provide that the original author is the licensor even if the licensee distributes the software. It would be desirable to analyse the legal implications of this difference with GNU-GPL and other free software licences.	3	PhL : (cfr supra : Comments on Dutch version) RAG : The notion of sublicensing was previously used by a number of licenses such as the OSL, and while in no way reducing the rights of upstream contributors, does ensure the enforceability of the licence by a licensor in case of violation by a licensee. Without sub-licensing, the infringing licensee could argue that all previous upstream licensors must jointly enforce the licence, and that the immediate licensor (who is the party with the most direct contact with the licensee, but perhaps is not a significant copyright holder/licensor in the whole work) has insufficient standing.
According to the most reliable case law relating to article 119 Law no. 633/1941 the transfer of future rights is prohibited. Future rights are rights created either by succeeding laws (which, for instance, extend the scope and the duration of copyright) or by new technologies, that make available new uses of existing works unforeseen	4	PhL : Assignment of future rights : classic issue. We knew that the clause could not be totally enforceable in all countries. RAG: The rights refer to the rights under copyright. These are not future rights. the same (current)

at the time of the original transfer. It is deemed that article 119 Law 633/1941 applies not only to publishing contracts but also to every copyright grant. Therefore the text of license that refers to “any media and formats, whether now known or later invented…” would not have binding effects under Italian law.		rights apply to all future media under copyright law. The statement referring to "any media..." may therefore not be necessary since it is already implied by the licence under copyright law, but the statement's inclusion improves the clarity of article 2 especially for non-lawyers.
It is worth emphasising that the condition that allows the licensor to impose to the licensee to keep intact patent and trademark notices renders this licence at odds with the GNU-GPL and other free software licenses]	4	CRID: this obligation does not mean that a patent can prevent the use of the software: a patent may vest the software, and the software may remain open source. PhL: last sentence of compatibility clause was drafted in order to avoid such conflicts in case of migration from EUPL to GPL. PES: this is not to encourage software patenting, but just in case such patenting would exist. RAG: The EUPL like any copyleft licence is "at odds" with the GNU GPL or any other copyleft licence, except through the compatibility clause. The GPL doesn't require trademarks to be attributed. But that is a requirement of trademark law. The requirement that attribution of patent notices be retained is not an acknowledgement of the patents' validity, but is not "at odds" with the requirement to retain attributions of authorship in any other form - the purpose of this is to retain a trail of authorship.
See supra sub art. 2	4	?
See supra sub art. 5 – Diritto d'attribuzione	5	?
According to article 1342 of the Italian Civil Code the law concerning unfair clauses (Section 1341 Civil Code) applies also to contracts concluded by means of a form. The clauses listed by article 1341 Civil Code are binding only if they have been specifically approved in writings (so-called “double signature” rule). This clause is included in the list of article 1341.	5	CRID: the licence should not contain any unfair clause… RAG: This would apply to every other licence for software (including proprietary software) which mostly include similar "shrink-wrap" or "click through" clauses implying

Therefore it is doubtable whether this clause would be binding according to Italian law if no double approval is made by the licensee.		acceptance of the contract - which hasn't been often tested in court. For the EUPL, which does not impose contractual terms beyond what is already imposed by copyright law, non-acceptance of the EUPL is not a practical problem since non-acceptance of the contract would mean the user is bound by ordinary copyright law and copying the EUPL-covered software would be a simple infringement.
A contractual limitation of liability arising from willful or grossly negligent behavior is void according to Section 1229 Civil Code. Accordingly it would be desirable to add the following text at the beginning of the article 8 provision: "as far as the applicable law permits to do so" (Italian translation: "Nella misura consentita dal diritto applicabile"). This modification should be made to the original English version of the license	6	PhL : Seems relevant CRID's CHANGE PROPOSAL "*Except in the cases of willful misconduct or damages directly caused to physical persons,* ***and to the extent permitted by applicable law****, the Licensor will…*" RAG: I believe the final statement of clause 8 is equivalent to the text proposed for inclusion: "However, the Licensor will be liable under statutory product liability laws as far such laws apply to the Work" PES: therefore no need for modification.
Comment: see supra sub art. 7	6	?
Under Italian law termination clauses could cause two problems: 1) they could be void if they refer to every breach of the contract generically; 2) they could not operate automatically but could require a specific statement to be communicated by the party wishing the termination clause to apply.]	7	PhL : to be discussed CRID : unavoidable RAG: As the EUPL does not seek to impose restrictions by contract beyond what is already restricted under copyright law, a termination clause that a licensee claims has not been accepted, even if voided, would nevertheless mean that the licensee has not received a copyright licence at all and conducting any activity protected by copyright would be simple infringement.
See supra sub art. 7	8	?

Concerns might arise insofar as the licensor where a professional trader. In this case the licensor should also take account of the specific laws governing consumer contracts with regard to issues such as: jurisdiction, applicable law, imperative provisions, consumer rights in case of distance contracts, etc.	8	PhL : cfr. supra. It seems difficult to draft the licence in order to address all consumer's protection law issues… PES: Using the EUPL does not limit the Licensor obligation to respect the provision of applicable law (i.e. about consumer rights and information). Knowing that some Member States laws may be more protective, importing all their provisions in EUPL would make it complex and would "export" obligations of the most protective law to all Licensors operating from other states.

LATVIAN

TYPE 3	Page	Comment
In our understanding, "European Institutions" in the English text refers to the institutions of the European Union (not to any institution in the geographical area of Europe, as it could have appeared from the Latvian translation).	Preamble	PhL : n.o. RAG: The commentator's understanding is correct.
A phrase was omitted.	2	PhL : n.o.
We are following the English and French versions of the Licence text, instead of the German	3	PES: Yes, it was specified that the English version was provided for translation (French and German version, altough also approved and official, were provided for information and observations only)
TYPE 4	Page	Comment
It would be problematic to prove on which moment the licensee became aware of the publication of the new version.	5	PhL : practical issue which is quite common in General Terms and Conditions… We have to live with it.

LITHUANIAN

TYPE 3	Page	Comment
Initial translation refers to the person of holder	1	PhL : n.o.

of copyright and not to the scope of copyright of holder of the Work patenka į Kūrinio autorių teisių turėtojo teisių apimtį).		
Initial translation refers to keeping all copyright, patent or trademarks notices Licencijos gavėjas įsipareigoja nepažeisti jokių pranešimų dėl autorių teisių, patentų ar prekių ženklų ir įspėjimų, nurodančių Licenciją, bei garantijų ribojimų	3	PhL : ? (foreign language)
Initial translation is European Commision, Licensor and any Licensee‘ kaip Licencijos davėjo, ir bet kurio	6	“
Initial translation refers to the Licensor and not the Licensee		PhL : n.o.
Initial translation is ‚European Commision, Licensor and any Licensee‘ kaip Licencijos davėjo, ir bet kurio Licencijos gavėjo;	6	PhL : n.o.
TYPE 4	Page	Comment
Not present		

MALTESE

TYPE 3	Page	Comment
The translation of the word ‘Licensor’ throughout the entire EUPL has been revised to read as ‘Il-Konċedent tal-Liċenzja’. There is no literal translation of ‘Licensor’ in Maltese and we believe that it is better to translate this word as presently shown rather than as it appeared in the original version since this was describing such an entity as an ‘Authority’ – ‘Awtorità’. ‘Konċedent tal-Liċenzja’ is literally translated into English as the ‘person giving out the licence’, i.e. the Licensor.	1	PhL : n.o.
This word was added (and is of particular importance as it consists in a definition and is used regularly in the EUPL) since it is used interchangeably with the word ‘Inti’ (‘Inti’ and ‘Lilek’ both mean ‘You’ in English and they are expressed as ‘Inti’ or ‘Lilek’ depending on the tense used in the sentences forming part of the EUPL).	2	PhL n.o.
TYPE 4	Page	Comment
Comment: The term ‘tale quale’ is the legal term used in Maltese contracts where one wants to sell or offer to the buyer or third party a thing without the addition of warranties at law.	4	PhL : n.o.

POLISH

TYPE 3	Page	Comment
Word ‘uprawnień’ is not necessary – it is not present in the English version	Preamble	PhL : n.o.
This word has been omitted from the English version.	1	“
The previous version was grammatically incorrect and did not reflect the original meaning.	1	“
Perfective mood was more in line with the original version.	1	“
This translation is more accurate. ‘Pobieranie’ (downloading) was not mentioned in the English version.	3	“
Grammatical correction.	3	“
This translation is accurate and in line with legal terminology.	3	“
There was no word ‘zawsze’ (always) in the English version.	4	“
The English version tells us about being available, not downloading ('pobieranie').	4	“
It reflects the original meaning more accurately and is grammatically correct.	4	“
The original translation was not grammatically correct and did not reflect the original meaning.	4	“
Grammatically incorrect / not necessary.	4	“
This translation is more accurate and grammatically correct.	5	“
This translation is more faithful.	5	“
This translation is more faithful to the English phrase ‘provide to the public’.	5	“
This phrase reflects precisely the English version.	6	“
TYPE 4	Page	Comment
It is not clear whether the English term in this respect "copyright" relates to copyright or also moral rights. It should be explained before the Polish translation is prepared. The wording of the Licence also relates to moral rights, therefore the term "copyright" in this sentence may be too narrow.	1	PhL : the sentence seems general enough “… **a** right of the copyright holder…”
The translation of the word 'distribution' proved to be difficult because of the misleading double usage of the word 'distribution' both as a notion and in its definition. In order to avoid this confusion this reiteration should be avoided in	2	PhL : the expression “Distribution and/or Communication” (with capitals) was chosen in order to avoid confusion.

the future versions of EUPL. As the result the proposed translation -- 'rozpowszechnianie' meaning literally 'dissemination' -- is used in accordance with the translation of the word 'distribution' used often in the Polish versions of the EU Directives. However, one could argue if a more narrow phrase 'wprowadzanie do obrotu' should be used instead in this context.		
According to art. 41 of the Polish Copyright and Neighbouring Rights Act of 1994, economic rights can be transferred (licensed) only with reference to modes of exploitation of works mentioned explicitly in the contract (license) and known at the time of conclusion of the contract (licence). Since future versions of the EUPL may introduce different modes of exploitation and since they will be automatically binding to the Licensee, this provision of Polish law will conflict with the EUPL. One of the possible solutions to this conflict is to allow the Licensee to choose and indicate which version of the EUPL applies to the provided Work or Software.	2	PhL : version problem : to be discussed with the European Commission as well…
According to art. 16 of the Polish Copyright and Neighbouring Rights Act of 1994 it is not possible to waive moral rights	2	PhL : waiver of moral rights : we knew that there was a risk that it would not be enforceable in every country
Hence only word 'distribution' is used, not the whole phrase 'Distribution and/or Communication' as defined earlier, we translated it as 'rozpowszechnianie' (dissemination). However, in our opinion, the whole notion of 'distributes and/or communicates' should be used in this place instead, which would be more clear and would enable us to translate it as 'dystrybucja', as it had been defined in the Definitions.	3	PhL : cfr. Supra
One could consider encompassing the moral right to remain anonymous (not revealing authorship) in future versions of the EUPL. However, it should be evaluated whether an exercise of such a right would not collide with other principles of the distribution of an EUPL-licensed software	3	CRID : open for discussion in future versions in the licence. RAG: Very interesting. It is unclear how to deal with this. Most other free software licences are designed with the assumption that contributors want recognition, not that they want anonymity!
Because of the wording of article 2, it can be considered whether this paragraph should also cover representations of the Licensor on his	4	Title 6 : chain of authorship CRID: Copyrights cover economic and moral rights

moral rights		
Disclaimer of Liability could to some degree conflict with Polish laws concerning consumers' protection and liability for dangerous products. However, the last sentence of the Disclaimer eases this tension.	4	PhL : n.o.
Actually the deleted name was incorrect as it should be translated as 'Ogólna Licencja Publiczna'. However we are aware that the proposed incorrect translation has been in use in Poland for some time. So in order to avoid the confusion (and since it is not required by the original English text of the Appendix) we would recommend omitting the Polish equivalent of the GPL name at all.	8	PhL/ In general : I also think it's better to keep the English Names (if original) PES: Agree with PhL. RAG: Here, and for the entire appendix, it should be made very clear in the translations that the legally binding names of the licences listed there are the "real names" of the licences in their legally binding languages. Thus, for GPL and most the others currently listed (except i.e. CeCill), the English names. The names in local languages should only be provided for clarity, and only if they are commonly used. As stated below (CPL) it is quite likely that English-language licences are known in Polish or other EU languages by their English names, and so no translation of these names may be necessary.
We would recommend to omit the Polish equivalent of this name	8	"
Actually the deleted translation was incorrect as it should be translated as 'Powszechna Licencja Publiczna'. However such a name is already used in Poland for General Public License. Therefore, since CPL is called in Poland 'Common Public License' (no Polish equivalent), we would recommend the deletion of the proposed Polish full name of this license. [	8	"
We would recommend to omit the Polish equivalent of this name	8	"

PORTUGUESE

TYPE 3	Page	Comment
Not present		

		Comment
Strictly read, Portuguese software Act does not require the specification of the means of use of the work	2	PhL : n.o.
Strictly read, Portuguese software law only allows the possibility of waiving the right of paternity.	2	PhL : n.o. waiver of moral rights (cfr. supra)
In Portuguese law software as such is not patent subject matter	2	PhL : n.o. RAG: The EUPL does not make any claims about whether software ("as such") is patent matter. It only states that if the licensor has patents that cover the work, they automatically provide a licence to use these patents. Similarly, it requires the retention of any patent attribution notices during further distribution, but there is no implication regarding the validity of the patents thus attributed. PES: The fact EUPL mentions the possibility of patents related to the work and provide guarantees in that case does not mean that EUPL "approve/validate/authorise" software patent.
This restriction should not prevent the lawful use of marks and other business signs as meta-tags.	3	(art. 5 last §) PhL : Interesting point, but the licence is not a TM licence.
The conformity of this clause with Portuguese contract law is not clear	4	PhL : disclaimer of warranty… cfr supra
The application of product liability to software is disputed in Portugal.	4	PhL : understandable
The validity of "click-wrap" licenses is not clear concerning (mainly consumer) standard contracts	5	PhL : "… can be accepted by clicking…" "…of by affirming consent in any other similar way…" The licensor is free to set up other contractual mechanism.
This information requirement must comply with Portuguese electronic commerce law according to the EU directive.	5	Information to the public PhL : n.o.
Consumer licensees who have residence in Portugal may claim the competence of Portuguese courts.	6	PhL : consumers law : cfr. supra
Consumer licensees who have residence in Portugal may claim the competence of Portuguese law.	6	"

ROMANIAN

TYPE 3	Page	Comment
Not present		
TYPE 4	Page	Comment
Note : The Romanian copyright law 8/1996 with modifications Art 11 para(1) does not allow any kind of giving up of the moral rights, so this article is inapplicable according with the Romanian legislation) giving up of the moral rights, so this article is inapplicable according with the Romanian legislation) Orginal text : Art. 11.-(1) The moral rights may not be renounced or disposed of.	3	PhL : cfr supra RAG: The EUPL is clear that: "the Licensor waives his right to exercise his moral right *to the extent allowed by law* "

SLOVAK

TYPE 3	Page	Comment
More precise translation of the original text in French.	1	PhL n.o.
The original English text does not specify that the modifications are to be done by authorized persons.	1	“
The original English version uses the term “natural person”, while the Slovak version used the term “pravnicka osoba” what means “legal entity	4	“
The Slovak version missed the word “similar”.	5	“
We would suggest referring not only to the address of residence, but also to the registered office/seat, in case the licensor is a legal entity.	6	Jurisdiction PhL : to be discussed. According to me, residence in case of a legal person should be interpreted as the seat of the company… CRID : it’s a classical issue of terminology in applicable law clauses
TYPE 4	Page	Comment
My remark concerns the expression “software”. In the Slovak version, the term “software” is translated as “computer programme”. It complies with the Slovak Copyright Law, namely with the Slovak Copyright Act (Act No	1	PhL : n.o. (translation of “software”) RAG: Software is used in the

618/2003 Coll. On Copyright and related rights (the Copyright Act)). In my opinion it is necessary to distinguish between the term "software" and "computer programme". I think, these two terms are not identical. The English version of the EUPL uses the expression "software", but the Slovak Copyright Act uses only the term "computer programme", and therefore, only computer programme is protected under the Slovak Copyright Law. The term "software" is often used by the Slovak legal professionals in wider sense, comprising also manuals and other materials provided together with a computer programme. The Slovak Copyright Act is in full compliance with the international agreements signed under the competencies of the World Intellectual Property Organisation (WIPO), which were adopted on the Geneva Diplomatic Conference in 1996, and which are worldwide known under the title "Internet Agreements". Computer programme is protected as a literary work in our Copyright Act (Article 7). Two articles, Article 35 and Article 36 of the Copyright Act create the legal framework of the protection of *computer programmes* in accordance with the Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs. The aforementioned Regulation fixes the same criteria for computer programmes protection as those already existing for literary works protection. A special emphasise is given to the criterion of copyright individuality and originality, meaning uniqueness of the intellectual product. The legal provisions respect also computer programme's practical efficiency and specificities. The authorised program user is allowed to modify and translate the authorised copy of the program when it is necessary for assuring computer's interoperability and operation. The authorisation copy has to be made whether by the author himself (herself) or by another copyright holder. The authorised user does not need any additional permission from the author or by another copyright holder to search, study, test or check computer's technical		English version to mean Computer Program, so using the Slovak words for Computer Program instead of Software if that provides more clarity within Slovak law would make sense. I believe that in English "software" and "computer program" are seen as equivalent.

capability in order to prepare all the necessary conditions for computer program's downloading and utilisation. These activities and their precise specification shall not be excluded from the contract. Consequently, in case the authorised user undertakes activities going beyond the activities specified in the contract, those activities shall be considered as infringement of copyrights and any copy made as a result of these activities shall be discarded.		

SLOVENIAN

TYPE 3	Page	Comment
The original Slovene translation would in English read: "The original EUPL Licence for such software was established in accordance with the IDABC objectives."	Preamble	PhL : n.o.
Translation of word "all" is missing.	3	"
This part of the translation does not correspond to English nor to German and French versions.	3	"
The original author is not a holder of copyright in accordance with this licence (as the translation might suggest), but is a holder of copyright granted under this licence.		"
The translation suggested that defects and bugs are inherent to the "development of this type of software" and not to "this type of software development".	4	"
The translation suggested that what is offered is not acceptance of obligations/services, but the agreement as such, which is not correct.	4	"
Translation referred only to "lawsuits" not to all claims.	4	"
In contrast to the English version, the translation refers to "permanent residence" and not only to "residence".	5 (three times)	"
TYPE 4	Page	Comment
Also the term "izvršil" could be used, which would bring the Slovene translation more in line with the German and French translations.	2	"
"Attribution right" cannot be translated into Slovenian literally. Translation into "Pravica	3	"

dodeljevanja" could even be misleading. We propose a descriptive translation is used.		
"Videno kupljeno" is usually used in purchase agreements and might not be the most suitable translation in this case. In our opinion, also the term "takšno, kakršno je" could be used, which is similar to the German translation "so wie es ist".	4	"

SPANISH

TYPE 3	Page	Comment
This is more in line with the French translation	4	"
TYPE 4	Page	Comment
The Spanish Law defines communication to the public as "todo acto por el cual una pluralidad de personas pueda tener acceso a la obra sin previa distribución de ejemplares a cada una de ellas". After this, it introduces And then introduces different examples (see art. 20.2 a-k).	2	PhL : n.o.
There seems to be a clear discrepancy here between the English and French versions. The English mentions **any** derivative, while the French refers to the author's own modification or derived works. The last option seems to be more reasonable	3	Attribution clause: FR « Le Licencié veillera à ce que ses modifications ou Oeuvres Dérivées portent une notification" EN „The Licensee must cause any Derivative Work to carry prominent notices stating that the Work has been modified and the date of modification. „ PhL : to be discussed (there seems indeed to be a small discrepancy) CRID's CHANGE PROPOSAL *"**In case of modification to the Work,** the Licensee must cause the Work to carry prominent notices stating that the Work has been modified and the date of modification. „*

There is no direct translation to Spanish of this term. We have discussed several options, but they all seem contrived, so we have maintained the Anglicism.	3	PhL : n.o.

SWEDISH

TYPE 3	Page	Comment
Not present		
TYPE 4	Page	Comment
I have chosen to use the terminology defined in the EUCD here, as the English version of the license uses the terminology of EUCD. However, it should be noted that there is a problem as the terminology used in Finland (as well as in the other Nordic countries) does not correspond to the EUCD. The rights related to copyright according to Finnish law are devided into 1. mångfaldiganderätten (the reproduction right) and 2. rätten att göra ett verk tillgängligt för allmänheten (the right to make a work available to the public) through any one of the following means; (a) spridning (distribution of a work) – this is the right to distribute tangible copies of a work, (b) visning (exhibition of a work) - this is the right to show or display a work without using any devices, (c) offentligt framförande (public performance) – this is the right to display a work using for instance a computer, a CD-player or any other device to audience present at the place of performance or to perform a work such as a musical work (live or recorded) to audience present at the place of performance,	2	PhL : n.o. (language issue)